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No. 93-768

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

MILWAUKEE BREWERY WORKERS' PENSION PLAN,

Petitioner,

v.

JOS. SCHLITZ BREWING COMPANY and THE STROH BREWERY COMPANY,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 12, 1993
CERTIORARI GRANTED JUNE 27, 1994

235 pp

TABLE OF CONTENTS

Page

Relevant Docket Entries 1

Seventh Circuit's August 13, 1993 Opinion
(Pursuant to Supreme Court Rule 26.1,
this Document can be found in the
Appendix to Petition for Writ of Certiorari
at Exhibit A)

District Court's June 6, 1991 Decision and Opinion 25

District Court's June 6, 1991 Judgment
(Pursuant to Supreme Court Rule 26.1,
this Document Can be found in the
Appendix to Petition for Writ of Certiorari
at Exhibit B)

District Court's June 3, 1992 Order
(Pursuant to Supreme Court Rule 26.1,
this Document can be found in the
Appendix to Petition for Writ of Certiorari
at Exhibit C)

District Court's October 20, 1992 Order
(Pursuant to Supreme Court Rule 26.1,
this Document can be found in the
Appendix to Petition for Writ of Certiorari
at Exhibit D)

Arbitrator's July 7, 1988 Award and Opinion
(Pursuant to Supreme Court Rule 26.1, this Document can be found in the Appendix to Petition for Writ of Certiorari at Exhibit E)

Arbitrator's August 24, 1988 Final Award
(Pursuant to Supreme Court Rule 26.1, this Document can be found in the Appendix to Petition for Writ of Certiorari at Exhibit F)

Plan Exhibit 64; Milwaukee Brewery Workers' Pension Plan, as Amended in its Entirety June 1 , 1979 75

Plan Exhibit 79, Schlitz Exhibit 45; August 14, 1981 Letter from Charles J. Mazza to Joint Committee 151

Plan Exhibit 133, Schlitz Exhibit 77; September 29, 1981 Letter from Joint Pension Committee to Schlitz Brewing Company 153

Plan Exhibit 146(c); Actuarial Report As of January 1, 1981 Dated June 17, 1981 160

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
NO. 88-CV-908

Date	Docket No.	Proceedings
8/29/88	1	**COMPLAINT**: Summons Issued.
8/29/88	2	Pltf's certificate of interest.
8/29/88	3	Pltf's response to Magistrate Consent Form.
9/16/88	4	Deft's certificate of interest.
9/16/88	5	**ANSWER** and counterclaim of defendant to vacate and modify arbitration award.
10/6/88	6	Pltf's reply brief to Deft's counterclaim.
10/11/88	7	Notice of status hearing set 10/26/88
10/21/88	8	Pltf's Motion for an Order to Confirm Arbitration Award P-ORDER.
10/21/88	9	Pltf's Supporting brief for motion for an Order to Confirm Arbitration Award

Date	Docket No.	Proceedings
10/26/88	10	**HEARING(RWW)** Status report/Conference call: Deft may file cross-motion for reduction of award; Deft to file brief & response to motion by 12/1/88; Pltf's reply brief due 1/9/89.
12/01/88	11	**STIP & ORDER(RWW)** that the Deft Milw. Brewery Workers Pension Plan shall have until December 15, 1988 to file its opposition brief to Pltfs' motion to confirm Arbitration Award; its motion to vacate the arbitrator's award and a supporting brief; The pltf's reply and opposition briefs are to be filed by January 24, 1989. Copy mailed to parties. E.O.D 12/02/88.
12/12/88		Received three boxes containing Transcripts and Exhibits from Boaz Siegel, arbitrator. (contents with the judge).
12/15/88	12	Deft's motion to vacate and modify arbitration award **D-VACATE**

Date	Docket No.	Proceedings
12/15/88	13	Deft's supporting brief to motion to vacate and modify arbitration award and in opposition to Pltfs' motion for an Order to confirm arbitration award. Exhibits A-R included.
1/23/89	14	Deft's motion for an Order assigning plaintiffs' motion to confirm the arbitration award ~~**D-ORDER.**~~
1/23/89	15	Deft's supporting brief to above motion.
1/24/89	16	**STIP & ORDER(RWW)** that the pltfs shall have until 2/7/89 to file a reply brief in support of their motion to confirm arbitration award.
2/7/89	17	Pltf's reply brief in support of their motion for an order to confirm arbitration award.
2/15/89	18	Notice of Oral arguments set 3/3/89
4/26/89	19	**ORAL ARGUMENTS(RWW)** court takes matter under advisement.
04/23/91	20	Pltf's LETTER to RWW respond to Deft's citation of recent decision in Huber v. Casablanca Industries, Inc..

Date	Docket No.	Proceedings
06/06/91	21	**DECISION & ORDER(RWW)**: this Court GRANTS IN PART and DENIES IN PART the parties' motions; this Court AFFIRMS the arbitrator's decision to deny the Plan's motion to dismiss; AFFIRMS the arbitrator's finding that the Plan required unanimous consent of all employers in order to adopt the direct attribution method of calculating Schlitz's withdrawal liability; AFFIRMS the arbitrator's finding that ERISA law does not impose a fiduciary duty upon a Plan's members when they decide whether to change the method of calculating withdrawal liability and VACATES the arbitrator's decision that the Plan improperly inclueded interest for the period between 12/31/80 and 01/01/82 in calculating Schlitz's payment scheduled. Copy mailed to parties. EOD:06/10/91.
06/06/91	22	JUDGMENT entered by Deputy Clerk. Copy mailed to parties. EOD:6/10/91.
06/20/91	23	Deft's MOTION to Amend Judgment. **D-AMEND JM**

Date	Docket No.	Proceedings
06/20/91	24	Deft's Brief in SUPPORT of Motion to Amend Judgment.
07/08/91	25	**STIPULATION & ORDER(RWW)**: that Pltfs shall have 60 days or until 09/01/91 in which to respond to Deft's Rule 59(e) Motion. Copy mailed to parties. EOD: 07/09/91.
08/28/91	26	**ORDER (RWW)**: That Plaintiff shall have an addition 30 days or until 10/01/91 in which to respond to Deft's Rule 59(e) Motion. Copy mailed to parties. EOD:08/29/91.
09/27/91	27	**ORDER (RWW)**: that Pltfs shall have an additional 30 days, or until November 1, 1991 in which to respond to Deft's Rule 59(e) Motion. Copy mailed to parties. EOD: 10/01/91.
10/30/91	28	**STIPULATION & ORDER (RWW)**: that Pltfs shall have an additional 30 days or until 12/01/91, in which to respond to Deft's Rule 59(e) Motion. Copy mailed to parties. EOD: 11/01/91.

Date	Docket No.	Proceedings
12/4/91	25	STIPULATION AND ORDER by Senior Judge Robert W. Warren: That the plaintiffs shall have an additional 30 days, or until 01/01/92, in which to respond to defendant's Rule 59(e) Motion. (cc: all counsel) (ctz) [Entry date 12/06/91] [Edit date 05/21/92]
12/13/91	26	STIPULATION AND ORDER by Senior Judge Robert W. Warren: IT IS HEREBY ORDERED that plaintiffs shall have an additional 30 days, or until 01/01/92 in which to respond to Defendant's Rule 59(e) motion. (cc: all counsel) (ctz) [Entry date 12/23/91]
1/2/92	27	BRIEF by plaintiff Jos Schlitz Brewing in RESPONSE to Defendant's Motion to AMEND JUDGMENT. [23-1](ctz)
1/10/92	28	REPLY BRIEF by defendant in support of motion to AMEND JUDGMENT. [23-1] (ctz)

Date	Docket No.	Proceedings
2/12/92	29	NOTICE OF ORAL ARGUMENT: Hearing setting on Motion to AMEND Judgment [23-1] at 9:00 on 4/10/92. (cc: all counsel) (ctz) [Entry date 02/13/92]
5/28/92	30	ATTORNEY APPEARANCE for defendant Milwaukee Brewery by Neil K. Quinn and Mary Ann Capron. (ctz)
5/28/92	31	HEARING MINUTES (RWW): Oral Arguement; Court takes matter under advisement, will issue decision by next Wednesday. (ctz) [Entry date 06/01/92]
05/28/92	32	STIPULATION AND ORDER by Senior Judge Robert W. Warren: It is hereby ordered that the law firm of Pretzel & Stouffer shall be substituted as counsel in this action for defendant Milwaukee Brewery Workers' Pension Plan. (cc: all counsel) (ctz) [Entry date 06/04/92]

Date	Docket No.	Proceedings
6/8/92	33	ORDER by Senior Judge Robert W. Warren granting in part the Plan's motion to AMEND JUDGMENT. [23-1] The Court orders the parties to attempt to arrive at an appropriate figure for the 1981 interest amount consistent with the Court's 6/6/81 Decision and Order. The parties should inform the Court in writing whether they were able to reach a resolution of the issue within 20 days of the signing of this Order. The Court also finds that the Plan is entitled to prejudgment interest at the prime rate from 7/7/88 on the 1981 interest amount. (cc: all counsel) (sln) [Entry date 06/05/92] [Edit date 11/27/92]
6/23/92	34	LETTER from plaintiff Jos Schlitz Brewing to Judge Warren requesting a hearing to be scheduled within the next 20 days. (ctz) [Entry date 06/24/92]

Date	Docket No.	Proceedings
6/25/92	35	NOTICE of hearing setting hearing on the appropriate dollar amount for the amended judgment [23-1] on 7/14/92 at 1:30 p.m. Briefs are due 7/8/92. (cc: all counsel) (sln) [Entry date 06/26/92]
7/9/92	36	ORDER by Senior Judge Robert W. Warren: Order requiring the parties to submit briefs on areas of dispute by 07/08/92 and setting a hearing on those matters for 07/14/92 is vacated. The parties are ORDERED to submit either an Agreed Order which reflects this Court's 06/03/92 Order or a Brief addressing any remaining areas of dispute by 07/20/92. In addition to setting forth the party's position on disputed issues in the Brief submitted, the parties should also address: whether a Court hearing is necessay; whether that hearing should be evidentiary or limited to legal argument and the length of time required for such a hearing. (cc: all counsel) (ctz) [Entry date 07/13/92]

Date	Docket No.	Proceedings
7/20/92	37	NOTICE as MEMORANDUM by plaintiff Jos Schlitz Brewing Regarding motion to Amend Judgment. (ctz) [Entry date 07/21/92]
7/20/92	38	MOTION by defendant Milwaukee Brewery for LEAVE to File Offer of Proof. (ctz) [Entry date 07/21/92]
7/20/92	39	NOTICE of Brief ADDRESSING Remaining Areas of Dispute by defendant Milwaukee Brewery. (ctz) [Entry date 07/21/92]
10/20/92	40	ORDER by Senior Judge Robert W. Warren that prejudgment interest shall accrue upon Schlit's overdue payments as of the date of each payment became due, for all payments owing after 7/7/88; and the order issued on 6/6/91 is a final order, and post-judgment interest should begin to accrue after that date (cc: all counsel) (amb) [Entry date 11/18/92]
11/17/92	42	JURISDICTIONAL STATEMENT by defendant Milwaukee Brewery (cc: all counsel) (amb) [Entry date 11/18/92] [Edit date 11/27/92]

Date	Docket No.	Proceedings
11/17/92	--	RECEIVED re [40-1] fee in amount of $ 105.00 (Receipt # 62499) (amb) [Entry date 11/18/92]
11/17/92	41	NOTICE OF APPEAL by defendant Milwaukee Brewery from Dist. Court decision [40-1] (cc: all counsel); parties notified. (amb) [Entry date 11/18/92]
11/18/92	--	SHORT RECORD Transmitted to USCA (cc: all counsel) parties notified (amb)
11/25/92	43	NOTICE OF CROSS APPEAL by plaintiff from Dist. court judgment 6/6/91; orders 6/8/92 and 10/20/92. (cc: all counsel) (sln) [Entry date 11/27/92]
11/25/92	44	JURISDICTIONAL STATEMENT by plaintiff re notice of cross appeal (cc: all counsel) (sln) [Entry date 11/27/92] [Edit date 11/27/92]
11/25/92	--	RECEIVED re [43-1] fee in amount of $ 105.00 from Whyte & Hirschboeck (Receipt # 62604) (sln) [Entry date 11/27/92]
11/27/92	--	SHORT RECORD Transmitted to USCA (cc: all counsel) (sln)

Date	Docket No.	Proceedings
12/22/92	46	MOTION by defendant Milwaukee Brewery for order to enlarge record on appeal (amb) [Entry date 12/28/92]
12/23/92	45	AFFIDAVIT/VERIFICATION of Mary Anne Capron, attorney for Millwaukee Brewery Workers, with regard to having the record expanded to include exhibits and transcripts from the arbitration; with attached certificate of mailing. (sln) [Entry date 12/24/92]
12/23/92	47	ORDER by Senior Judge Robert W. Warren granting motion for order to enlarge record on appeal [46-1] (cc: all counsel) (amb) [Entry date 01/06/93]
1/19/93	48	TRANSCRIPT filed. Taken on 5/28/92 on oral argument (ers) [Entry date 01/20/93]
1/19/93	49	TRANSCRIPT of proceedings taken 4/26/89 filed. (amb) [Entry date 01/22/93]

Date	Docket No.	Proceedings
4/16/93	--	RECORD on Appeal sent to 7th Circuit Court of Appeals re [43-1] and [41-1], USCA nos. 92-3811 and 92-3894 consisting of 1 vol. pleadings, 3 loose pleadings, 2 transcripts, 1 loose exhibit, and 3 boxes of exhibits. (cc: all counsel) (amb)
9/9/93	50	MANDATE/CERTIFIED COPY from Circuit Court of Appeals reversing and remanding the Decision of the District Court of [Appeal [43-1] with instructions to enforce arbitrator's award, affirming in part the decision of the District Court [41-1] Costs taxed in favor of Schlitz Brewing in the sum of $692.20. (kmm) [Entry date 09/13/93]
9/10/93	--	RECORD on appeal returned from U.S. Court of Appeals 92-3811 and 92-3894 consisting of 1 vol. of pleadings, 3 loose pleadings, 2 vols. of transcripts, 1 vol. of exhibits, 3 boxes of exhibits (returned to exhibit clerk). (kmm) [Entry date 09/13/93]

Date	Docket No.	Proceedings
9/14/93	51	MOTION by plaintiff Jos Schlitz Brewing for ORDER for Return of Amount of Judgment, Plus Interest at Rate Prescribed by MPPAA. (ctz)
10/20/93	52	ORDER by Senior Judge Robert W. Warren: The Judgment entered on June 6, 1991 (and amended by Orders entered on June 8, 1992 and October 20, 1992) is vacated; The arbitrator's award is affirmed in its entirety. Terminating case. (cc: all counsel) (ctz) [Entry date 10/22/93] [Edit date 03/01/94]

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT OF APPEALS FOR THE SEVENTH CIRCUIT NO. 92-3811 and 92-3894

Date	Proceedings
11/20/92	Private civil case docketed. [92-3811] [431794-1] Appearance form due on 12/21/92 for David C. Hertel, for James W. Greer, for Marc Gertner, for Maryanne H. Capron, for Neil K. Quinn, for Robert M. Chemers, for Michael G. Bruton. Transcript information sheet due 11/30/92 for Marc Gertner, for Maryanne H. Capron, for Neil K. Quinn, for Robert M. Chemers, for Michael G. Bruton. Appellant's brief due 12/30/92 for Milwaukee Brewery. (patb) [92-3811]
11/20/92	File Appellant Milwaukee Brewery jurisdictional statement. [92-3811] [431825-1] (patb) [92-3811]
11/30/92	Added attorney Barbara J. Janaszek per appearance form for Appellee Joseph Schlitz Brew, Appellee Stroh Brewery. (roxa) [92-3811]
11/30/92	Appearance form filed for Appellee Joseph Schlitz Brew, Appellee Stroh Brewery by attorney Barbara J. Janaszek, David C. Hertel, James W. Greet. [92-3811] [431794-1] (roxa) [92-3811]

Date	Proceedings
11/30/92	Appearance form filed for Appellant Milwaukee Brewery by attorney Robert M. Chemers, Michael G. Bruton. [92-3811] [431794-1] (roxa) [92-3811]
12/8/92	ORDER: The court orders these appeals [92-3811, 92-3894] CONSOLIDATED for purposes as follows: [434649-1] 1. Appellant's brief on main appeal is due 12/30/92 for Milwaukee Brewery in 92-3811. 2. Appellee's in main apl. and A's br. in xap. due 1/29/93 for Stroh Brewery in 92-3811, for Joseph Schlitz Brew in 92-3811, for Stroh Brewery in 92-3894, for Joseph Schlitz Brew in 92-3894. 3.Reply br. in main apl. and E's brief in xap. due 3/1/93 for Milwaukee Brewery in 92-3811, for Milwaukee Brewery in 92-3894. 4. Reply brief, if any, on cross-appeal due 3/15/93 for Stroh Brewery in 92-3894, for Joseph Schlitz Brew in 92-3894. (patb) [92-3811 92-3894]
12/22/92	Filed motion by Appellant Milwaukee Brewery in 92-3811, Appellee Milwaukee Brewery in 92-3894 to supplement record on appeal. [441610-1] [92-3811, 92-3894] (roxa) [92-3811 92-3894]

Date	Proceedings
12/23/92	ORDER issued re: MOTION TO SUPPLEMENT RECORD ON APPEAL. IT IS ORDERED that said motion will be HELD IN ABEYANCE pending appellant's submission of a copy of the district court's order on its motion to supplement the record, or upon submission of appellee's stipulation to supplement the record based on the parties' mutual representation that the materials with which appellant seeks to supplement the record were made a part of the record below. (chry) [92-3811 92-3894]
12/30/92	Filed 15c appellant's brief on main appeal by Milwaukee Brewery in 92-3811. [92-3811] [443459-1] (elea) [92-3811]
12/30/92	Filed 10c appendix by Appellant Milwaukee Brewery in 92-3811 [92-3811] [443461-1] (elea) [92-3811]
1/21/93	Appearance form filed for Appellant Milwaukee Brewery in 92-3811 by attorney Maryanne H. Capron, Robert M. Chemers, Michael G. Bruton. [431794-1] (roxa)_ [92-3811]
2/2/93	Brief deficiency letter sent to Appellee Joseph Schlitz Brew in 92-3811, Appellee Stroh Brewery in 92-3188. [434649-1] [92-3811, 92-3894] (trac) [92-3811 92-3894]

Date	Proceedings
2/5/93	Filed 15c appellee, cross-appellant's brief by Joseph Schlitz Brew and Stroh Brewery in 92-3811 and 92-3894, per order. [92-3811, 92-3894] [458040-1] (cfre) [92-3811, 92-3894]
2/5/93	Filed 10c appendix by Appellee Joseph Schlitz Brew and Stroh Brewery in 92-3811 92-3894, per order. [92-3811 92-3894] [458051-1] (cfre) [92-3811 92-3894]
2/5/93	Filed instanter motion by Appellee Joseph Schlitz Brew in 92-3811, Appellee Stroh Brewery in 92-3811, Appellant Joseph Schlitz Brew in 92-3894, Appellant Stroh Brewery in 92-3894 to file appellee's, cross-appellant's brief. [458120-1]. 15 copies appellee/cross-appellants brief and 10 appendix tendered. [458120-1] [92-3811, 92-3894] (kolb) [92-3811 92-3894]

Date	Proceedings
2/5/93	ORDER issued GRANTING instanter motion to file appellee's, cross-appellant's brief [458120-1] in 92-3811, 92-3894. The clerk of this court is directed to file instanter the tendered copies of the combined responsive brief in the main appeal and opening brief and appendix in the cross appeal. [92-3811, 92-3894] [458120-1] 1. Reply br. in main apl. and E's brief in xap. due 3/8/93 for Milwaukee Brewery in 92-3811, for Milwaukee Brewery in 92-3894 2. Reply brief, if any, on cross-appeal due 3/22/93 for Stroh Brewery in 92-3894, for Joseph Schlitz Brew in 92-3894 (grac) [92-3811 92-3894]
2/18/93	Filed oversize exhibit in Section 42 of exhibit room. Number of boxes: 1 [92-3811] [434694-1] (gina) [92-3811]
3/8/93	Filed 15c reply brief in main appeal and cross-appellee's brief by Milwaukee Brewery in 92-3811, in 92-3894. [92-3811, 92-3894] [466559-1] (patb) [92-3811, 92-3894]
3/23/93	Filed 15c appellant's reply brief in cross-appeal by Stroh Brewery in 92-3894, Joseph Schlitz Brew in 92-3894. [92-3894] [470594-1] (patb) [92-3894]
4/2/93	ORDER: Argument set for Friday, May 7, 1933 at 10:30 a.m. Each side limited to 30 minutes. [92-3811, 92-3894] [473920-1] (broo) [92-3811 92-3894]

Date	Proceedings
4/20/93	Orig. record on appeal filed. Contents of record: 1 vol. pleadings; 2 vol. transcripts; 1 volume, 3 boxes exhibits; 3 volumes loose pleadings. [92-3811, 92-3894] [480279-1] (chuc) [92-3811 92-3894]
4/29/93	Filed oversize exhibit in Section 61 of exhibit room. Number of boxes: 3 [92-3811] [434649-1] (gina) [92-3811]
5/7/93	Case heard and taken under advisement by panel: Chief Judge William J. Bauer, Circuit Judge Walter J. Cummings, Circuit Judge Frank H. Easterbrook. [92-3811, 92-3894] [487233-1] (broo) [92-3811 92-3894]
5/7/93	Case argued by Michael G. Bruton for Appellant Milwaukee Brewery in 92-3811, David C. Hertel for Appellee Joseph Schlitz Brew, Appellee Stroh Brewery in 92-3811, michael Bruton for Appellee Milwaukee Brewery in 92-3894, David C. Hertel for Appellant Joseph Schlitz Brew, Appellant Stroh Brewery in 92-3894. [92-3811, 92-3894] [431794-1] (broo) [92-3811 92-3894]

Date	Proceedings
5/10/93	ORDER: The Court, on its own motion, ORDERED from the bench at oral argument of 5/7/93, that the parties shall file simultaneous memoranda of law by 5/17/93 addressing this court's jurisdiction to hear this matter, specifically, whether a final judgment was entered in the district court. [92-3811, 92-3894] [434649-1] Court ordered action due 5/17/93 for Milwaukee Brewery, Schlitz Brewery, and Stroh Brewery in 92-3811 and 92-3894. (grac) [92-3811 92-3894]
5/17/93	Filed Appellee Stroh Brewery in 92-3811, Appellee Joseph Schlitz Brew in 92-3811, Appellant Stroh Brewery in 92-3894, Appellant Joseph Schlitz Brew in 92-3894 memorandum in response to this court's 5/10/93 order. [92-3811, 92-3894] [434649-1] (patb) [92-3811 92-3894]
5/21/93	Filed motion by Appellant Milwaukee Brewery in 92-3811, Appellee Milwaukee Brewery in 92-3894 to file supplemental brief. [493546-1] 10c of corrected supplemental brief on jurisdiction tendered. [493546-1] [92-3811, 92-3894] (patb) [92-3811 92-3894]

Date	Proceedings
5/26/93	ORDER issued GRANTING motion to file corrected supplemental brief on jurisdiction [493546-1] in 92-3811, 92-3894. The clerk of this court is directed to file instanter the tendered copies of the corrected supplemental brief of the defendant and distribute it to the assigned merits panel immediately. [92-3811, 92-3894] [493546-1] (patb)
	[92-3811 92-3894]
5/26/93	Filed Appellant Milwaukee Brewery in 92-3811, Appellee Milwaukee Brewery in 92-3894 10c corrected supplemental brief on jurisdiction as ordered by the court. [92-3811, 92-3894] [494255-1] (patb) [92-3811 92-3894]
6/22/93	Filed Appellant Milwaukee Brewery in 92-3811, Appellee Milwaukee Brewery in 92-3894 Citation of Additional Authority, per CR 28(j). Dist. [92-3811, 92-3894] [502467-1] (patb) [92-3811 92-3894]
8/13/93	Filed opinion of the court by Judge Easterbrook. AFFIRMED in part, REVERSED and this cause is REMANDED with instructions. Bauer, Cummings, Easterbrook [92-3811, 92-3894] [434649-1] (patb) [92-3811 92-3894]

Date	Proceedings
8/13/93	ORDER: Final judgment filed per opinion. Joseph Schlitz Brewing Company shall recover its costs in both appeals. [92-3811, 92-3894] [518376-1] (patb) [92-3811 92-3894]
8/31/93	Filed Appellee Stroh Brewery in 92-3811, Appellee Joseph Schlitz Brew in 92-3811, Appellant Stroh Brewery in 92-3894, Appellant Joseph Schlitz Brew in 92-3894 Bill of Costs in the amount of $692.20. [92-3811, 92-3894] [434649-1] (chuc) [92-3811 92-3894]
9/7/93	MANDATE ISSUED AND ENTIRE RECORD RETURNED: 1 vol. pleadings, 2 vol. transcripts, 3 vol. loose pleadings, 1 vol. exhibits and 3 boxes of exhibits. WITH BILL OF COSTS IN THE AMOUNT OF $692.20. [92-3811, 92-3894] [434649-1] (patb) [92-3811 92-3894]
9/13/93	Filed mandate receipt. [92-3811, 92-3894] [434649-1] (fern) [92-3811 92-3894]
9/13/93	Filed receipt for bill of costs. [92-3811, 92-3894] [434649-1] (fern) [92-3811 92-3894]
11/19/93	Filed notice from the United States Supreme Court of the filing of a Petition for Writ of Certiorari (Case No. 93-768). [92-3811, 92-3894] [434649-1] (cint) [92-3811 92-3894]

Date	Proceedings
7/5/94	Filed order from the Supreme Court GRANTING the Petition for Writ of Certiorari limited to question 1. Supreme Court Case No.: 93-768. [92-3811, 92-3894] [619313-1] (cint) [92-3811 92-3894]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOS. SCHLITZ BREWING COMPANY and
THE STROH BREWERY COMPANY,

Plaintiffs,

Case No. 88-C-908

MILWAUKEE BREWERY WORKERS'
PENSION PLAN,

Defendant.

DECISION AND ORDER

This action involves the validity of a withdrawal liability assessment made by the Milwaukee Brewery Workers' Pension Plan ("the Plan") in 1981 against the Joseph Schlitz Brewing Company ("Schlitz") and its successor in interest, the Stroh Brewery Company. This Court originally deferred this matter to arbitration as required by 29 U.S.C. § 1401(a). Arbitrator Boaz Siegel rendered his award on August 24, 1988, holding that (1) Schlitz had instituted arbitration in a timely manner, (2) the Plan required unanimous consent of all employers in order to adopt the direct attribution method in calculating Schlitz's withdrawal

liability and therefore, because Schlitz had not consented to this method, it could not be assessed under the method and (3) Schlitz could not be assessed predemand interest. The Plan contends that each of these conclusions of the arbitrator is erroneous.

Now before the Court are (1) the Plan's Motion to Vacate and Modify the Arbitration Award and (2) Schlitz's Motion to Confirm the Award.

I. BACKGROUND

Between March 1, 1954 and June 1, 1981, Schlitz contributed to a multiemployer pension plan pursuant to successive bargaining agreements with the Brewery Workers' Local Union No. 9 ("Local 9"). In September 1981, Schlitz closed its Milwaukee brewery and withdrew from the Plan. The Plan assessed a withdrawal liability against Schlitz in the sum of $41,031,406. This assessment was calculated using a method known as the direct attribution method instead of the statutorily prescribed presumptive method. See 29 U.S.C. § 4211(b).

Schlitz disputed the assessment of its withdrawal liability under the direct attribution method and filed a lawsuit against the Plan. See Jos. Schlitz Brewing Company v. Pension Benefit Guaranty Corporation and Milwaukee

Brewery Workers' Pension Plan, et al., Case No. 82-C-0340. On December 28, 1984, this Court entered a Decision and Order dismissing that action and directing Schlitz and Plan to proceed with arbitration. The parties proceeded with arbitration.and selected Mr. Siegel as their arbitrator. On July 7, 1988, Mr. Siegel issued an initial opinion and award, primarily in favor of Schlitz. In his final award, the arbitrator ruled that the withdrawal liability of Schlitz, payable to the Plan, was $23,300,000.

II. SUMMARY OF THE ARBITRATOR'S AWARD

A. Arbitrator's Statement of the Facts

There is a presumption, rebuttable only by a clear preponderance of the evidence, that the findings of fact made by the arbitrator are correct. 29 U.S.C. § 1401(c). The Plan has failed to establish by a clear preponderance of the evidence that any of the arbitrator's findings are incorrect. Thus, the Court adopts the arbitrator's findings of fact as summarized below.

1. The Milwaukee Brewers' Association

Blatz Brewing Co., Gettelman Brewing Co., Independent Milwaukee Brewery, Miller Brewing Co. ("Miller"), Pabst Brewing Co. ("Pabst") and Schlitz formed the Milwaukee Brewers' Association ("the Association") to

prepare for and negotiate the bargaining agreements with various local organizations, including Local 9. On October 28, 1958, the participating members of the Association agreed to a defined set of principles, rules and procedures (the "Association Agreement"). The Association Agreement contained eleven basic commitments, including the following:

> All decisions and actions taken by the Proprietors' Committee and by the Labor Committee shall be by unanimous vote of the respective committee, with each brewery having a reasonable opportunity to cast its vote on the question.

The Association Agreement also established the negotiating procedures which governs the conduct of the Association's Labor Committee. The procedures include the following:

> (1) All questions before the Labor Committee must be decided by unanimous vote of the members present. Every member shall be given adequate notice of all meetings.
>
> (2) No bargaining proposals shall be made or accepted without prior unanimous consent of Labor Committee members.
>
> (3) Any Labor Committee member may dissent, thereby requiring referral to the Proprietors' Committee; every effort shall be made to resolve disagreements and refer to the Proprietors' Committee only such matters as might involve major policy.

2. The Plan

The Plan was established and is maintained pursuant to successive collective bargaining agreements between Local 9 and Miller, Pabst and Schlitz. The brewing companies bargained jointly with Local 9 until January 21, 1981, when Schlitz gave notice of its withdrawal from multiemployer bargaining. In the 1981 labor negotiations with Local 9, Miller and Pabst negotiated jointly, and Schlitz negotiated alone.

The Plan Document sets forth that the Plan can only be amended by the "mutual agreement of the Union and the Employers." During the period from 1954 to 1979, the Plan was amended eleven times by the mutual agreement of the Union and all participating employers.

A Joint Committee, consisting of members appointed by Local 9 and the participating employers, operated and administered the Plan. Kenneth Mueller, President of Local 9, was Chairman of the Joint Committee. The Plan Document granted the Joint Committee the power necessary for proper administration of the Plan. However, the Joint Committee did not have the power to amend the Plan.

On January 16, 1981, the Plan's counsel discussed the implications of the Multiemployer Pension Plan Amendments

Act of 1980 ("the MPPAA") at a specially called meeting of the Joint Committee. At the Joint Committee's January 19, 1981 meeting, the Committee decided that the Plan's counsel should draft a letter for the Committee to send to Local 9 and the employers, notifying them of the fact of the new law. The letter advised Local 9 and the employers of the effect of MPPAA and indicated that the presumptive method of determining employer withdrawal liability would apply unless the Plan were amended.

3. The 1979 and 1981 Contract Negotiations Between The Association and Local 9

During the 1979 contract negotiations, a dispute arose among the members of the Association's Labor Committee regarding Local 9's wage demands. The representative from Schlitz claimed that the wage demands exceeded the President's guidelines and that no joint proposal in excess of the guidelines should be made. Miller and Pabst disagreed. The chief executive officers of the breweries met on May 23, 1979 to attempt to resolve the disagreement. They were unable to reach an agreement at the meeting.

On January 21, 1981, Schlitz gave timely notice to Miller, Pabst and Local 9 of its withdrawal from the Association and joint bargaining with the Brewery Proprietors.

Henceforth, Schlitz negotiated separately with Local 9. Notwithstanding its separate bargaining on all issues, Schlitz gave notice that it would maintain its representation on the Joint Committee and continue to participate in the Plan. Charles Mazza, the Schlitz representative on the Joint Committee, attended meetings of the Joint Committee until his resignation on September 14, 1981.

4. The 1981 Negotiations Between Miller, Pabst and Local 9

On May 20, 1981, the president of Local 9 notified Miller, Pabst and Schlitz of a meeting to be held on May 22, 1981 "for the purpose of negotiating changes in the Milwaukee Brewery Workers' Pension Plan." Schlitz responded in a letter dated May 21, 1981. On May 22, 1981 and May 29, 1981, Miller, Pabst and Local 9 met and agreed to two memoranda of understanding (the "5/22 and 5/29 Memoranda") regarding the Plan. The Memoranda directed the Plan to employ the direct method instead of the presumptive method in the calculation of withdrawal liability. Miller, Pabst and Local 9 never proposed the 5/22 or 5/29 Memoranda to Schlitz. In addition, Schlitz and Local 9 never reached any agreement with respect to the subject matter of those memoranda.

On August 17, 1981, the Joint Committee directed the Plan's actuary to calculate the withdrawal liability of Schlitz based upon the 5/22 and 5/29 Memoranda. The actuary reported his results to the Joint Committee on September 15, 1981. On September 29, 1981, the Joint Committee sent a letter to Schlitz demanding payment of $41,031,406.

B. **The Arbitrator's Award**

As a preliminary matter, the arbitrator addressed two motions submitted by the Plan and the Plan's request for ruling regarding the burden of proof. The arbitrator denied the Plan's Motion to Dismiss the Arbitration Proceeding and granted the Plan's Motion to Limit Issues for Arbitration (to eliminate the issue of the constitutionality of the MPPAA). The arbitrator also ruled that 29 U.S.C. § 1401(a)(3)(A) provided the proper burden of proof in the arbitration action.

The arbitrator next found that the 5/22 and 5/29 memoranda did not amend the Plan so as to be applicable to Schlitz. Consequently, the Plan did not require use of the direct attribution method in the calculation of Schlitz's withdrawal liability. The arbitrator rejected the argument of the Plan that Pabst, Miller and Local 9 could adopt the direct attribution method without the agreement of Schlitz. The arbitrator held that the Plan requires unanimous agreement

among Local 9 and all the employers to be amended. The arbitrator stated that it is not proper to treat the Plan members as fiduciaries to allow the adoption of the direct attribution method without the agreement of all Plan members.

The arbitrator found that the interest rate assumption adopted by the Plan's actuary and used in the determination of the withdrawal liability of Schlitz was reasonable. He stated that the assumption offered the actuary's best estimate of anticipated experience under the Plan.

The arbitrator found that he lacked sufficient evidence to determine if the retirement age assumption used by the Plan actuary was reasonable. Consequently, he referred the question to the parties and their actuaries for further consideration and possible agreement.

The arbitrator held that the Plan's addition of interest for the year 1981 in calculating the payment schedule was incorrect under the MPPAA. The arbitrator stated that his ruling is supported by the clear statutory declaration that the payment schedule shall be determined as if the first payment is to be made on the first day of the plan year following withdrawal, which in this case would be January 1, 1982.

III. THE PLAN'S MOTION TO VACATE AND MODIFY THE AWARD

The Plan moves to vacate the arbitrator's award. The Plan first argues that the arbitrator erred in not dismissing the arbitration. The Plan asserts that Schlitz failed to initiate the arbitration within the time and manner required by law.

In the alternative, the Plan moves to vacate the award and reinstate the Plan's adoption of the direct attribution method of calculating withdrawal liability and its assessment of predemand interest. The Plan argues that vacation of the award and reinstatement of the Plan's determination is proper for the following reasons:

> (1) The arbitrator erred in not applying the statutory presumption in favor of the Plan's determination.
>
> (2) The arbitrator erred in finding that the Plan's requirement of "mutual agreement" meant unanimous agreement between Local 9 and all the employers.
>
> (3) The arbitrator erred in finding that the representatives of the Plan were not acting as ERISA fiduciaries when they amended the Plan to select the method of determining an employer's withdrawal liability.
>
> (4) The arbitrator erred in finding that the interest for the year 1981 was not to be included in the calculation of Schlitz's withdrawal liability.

A. **Standard of Review**

As stated above, 29 U.S.C. § 1401(c) requires that

this Court defer to the factual findings of the arbitrator. Section 1401(c) provides:

> (c) Presumption Respecting Finding of Fact by Arbitrator. In any proceeding under section (b), there shall be a presumption, rebuttable only by a clear preponderance of the evidence that the findings of fact made by the arbitrator were correct.

However, this Court is to review de novo the legal conclusions of the arbitrator. The Seventh Circuit in Chicago Truck Drivers Pension Fund v. Zahn Drug stated:

> Congress did intend that all legal determinations by the arbitrator be subject to de novo review. Consequently, the parties have the right to expect that the reviewing court will scrutinize fully the arbitrator's understanding of the legal principles.

890 F.2d 1405, 1411 (7th Cir. 1989) (emphasis in original).

This case also involves mixed questions of fact and law. With respect to these questions, the Seventh Circuit has held that courts should apply a "clearly erroneous" standard. See id.

B. **The Plan's Motion to Dismiss**

The arbitrator's decision with respect to the Plan's motion to dismiss involves a mixed question of fact and law, since the arbitrator applied ERISA law to a particular factual

situation. Accordingly, this Court shall apply the clearly erroneous standard of review to the arbitrator's decision.

In denying the Plan's motion to dismiss, the arbitrator found that a December 23, 1981 letter from Schlitz to the Plan, in combination with prior correspondences between the parties, met the requirements of 29 U.S.C. § 140l(a)(1)(B) and 29 U.S.C. § 1399(b)(2)(A).

Section 1401(a)(1)(B) provides:

> (a) Arbitration proceedings; matters subject to arbitration; procedures applicable, etc.
>
> (1) Any dispute between an employer and the Plan sponsor of a multi-employer plan concerning a determination made under 29 U.S.C. §§ 1381-1399 shall be resolved through arbitration. Either party may initiate the arbitration proceeding within a 60-day period after the earlier of --
>
> . . .
>
> (B) 120 days after the date of the employer's request under 29 U.S.C. § 1399(b)(2)(A).

Section 1399(b)(2)(A) provides:

> No later than 90 days after the employer receives the notice described in paragraph
>
> (1),[1] the employer --

> (i) may ask the Plan sponsor to review any specific matter relating to the determination of the employer's liability and the schedule of payments.
>
> (ii) may identify any inaccuracy in the determination of the amount of the unfunded vested benefits allocable to the employer, and
>
> (iii) may furnish any additional relevant information to the Plan sponsor.

The Plan asserts that the December 21, 1981 letter fails to meet the requirements of § 1399(b)(2)(A) and therefore Schlitz failed to meet the requirements of § 1401(a)(1)(B). The December 21, 1981 letter is as follows:

> Brewery Worker's Pension Plan
> 2189 North 48th Street
> Milwaukee, Wisconsin 53208
>
> Attention: Katherine M. Roback, Secretary
>
> Dear Ms. Roback:
>
> In accordance with the procedures suggested in your letter dated December 3, 1981, we hereby request a determination by the Joint Committee of the employer withdrawal liability chargeable to Schlitz under the "presumptive method" for calculating such liability (under Section 4211(b) of the Employee Retirement Income Security Act of 1974, as amended

("ERISA")). We believe that the presumptive method is the only method which may correctly be applied to Schlitz under applicable law. The Joint Committee's determination of the Schlitz withdrawal liability under the presumptive method should identify any differences which may exist between the accounts of the liability as determined under the direct attribution method asserted by the Joint Committee to be applicable and the presumptive method. Therefore, we hereby specifically request from you the following:

1. A statement concerning the withdrawal liability of Schlitz under the presumptive method set forth in Section 4211(b) of ERISA and the underlying calculations.

2. The payment schedule applicable to Schlitz under the presumptive method and the underlying calculations.

3. The calculations used to determine the unfunded vested benefits of the Plan for purposes of determining Schlitz's withdrawal liability, and the actuarial assumptions and methods used in connection therewith have previously been furnished to us. If any changes to those calculations would result from the use of the presumptive method, then we request those calculations, as revised.

4. A statement concerning the Joint Committee's decision as to which method

of calculating employer withdrawal liability applies to Schlitz and an explanation of the basis for the decision.

Very truly yours,

JOS. SCHLITZ BREWING COMPANY

(signed)
H.L. Fe.

(Emphasis added).

The December 23, 1981 letter meets the requirements of § 1399(b)(2)(A) as set out in subsections (i) and (iii). The letter explicitly requests the Plan to review and submit a statement concerning the basis for its decision to employ the direct attribution method rather than the presumptive method. This request meets the requirements of subsection (i), that the employer ask the Plan sponsor to review a specific matter relating to the employer's liability. The letter also furnishes additional relevant information pursuant to subsection (iii) by stating: "[w]e believe that the presumptive method is the only method which may correctly be applied to Schlitz under applicable law."

Because this Court concurs with the arbitrator's decision with respect to the Plan's motion to dismiss, the

Court finds the Arbitrator's decision was not clearly erroneous.

C. Whether the Plan Required Unanimous Consent of All Employers in Order to Adopt the Direct Attribution Method of Calculating Schlitz's Withdrawal Liability

In determining whether unanimous consent was required to adopt the direct attribution method of imposing liability, this Court must address two issues: (1) whether the Plan requires unanimous consent to be amended and (2) if the Plan requires unanimous consent, whether ERISA overrides that requirement.

1. Whether the Plan Calls for Unanimous Consent

Whether the Plan requires unanimous consent to be amended presents a mixed question of fact and law because it involves the application of contract, ERISA and trust principles to factual circumstances. Consequently, this Court shall defer to the arbitrator's determination unless it is clearly erroneous.

Article IX of the Plan specifies that: "The Plan may be modified, altered or amended upon mutual agreement of the Union and the Employers... (emphasis added). The arbitrator held that the words "mutual agreement" mean

unanimous agreement. See Milwaukee Brewery Workers' Pension Plan and Schlitz Brewing Co., 9 EBC 2385, 2394 (1988). In support of his determination, the arbitrator notes that: (1) Black's Law Dictionary (3rd) Edition defines "agreement" as "the union of two or more minds in a thing done or to be done; a mutual assent to do a thing" and therefore the word "mutual" appears to be an inherent element of the word "agreement" and (2) all amendments to the Plan prior to those made on May 22 and May 29, 1981, were made by unanimous agreement between Local 9 and all the employers. See id.

The Plan asserts that the arbitrator's determination was incorrect because: (1) the arbitrator failed to apply the statutory presumption that the Plan's determination of this issue was correct; (2) when the parties intended that an act could be performed only by unanimous consent, they spelled out that requirement unambiguously; (3) the arbitrator's reference to the fact that all prior amendments were made by unanimous agreement does not prove that unanimous concurrence was required and (4) the arbitrator improperly avoided addressing a presumption against the requirement of unanimous agreement incorporated into ERISA law from the

common law of trusts. This Court shall address each of the Plan's arguments.

(a) The Arbitrator Failed to Apply the Statutory Presumption that the Plan's Interpretation of "Mutual Agreement" Was Correct

29 U.S.C. § 1401(a)(3)(A) provides that "any determination made by a plan sponsor . . . under 29 U.S.C. § 1381-1399[2] . . . is presumed correct unless the party contesting the determination shows by a preponderance of the evidence that the determination was unreasonable or clearly erroneous." The Plan argues that Section 1401(a)(3)(A) requires that the arbitrator defer to the Plan's determination with respect to the meaning of the term "mutual agreement."

However, the Plants determination of the meaning of "mutual agreement," fails to pass muster even under the "unreasonable or clearly erroneous" standard. A fundamental rule of contract interpretation is that the words of a contract shall be given their ordinary and popularly accepted meanings in the absence of anything indicating that they were used in a different sense or that the parties intended some special colloquial meaning. 17A C.J.S. Contracts § 301. Webster's defines "mutual" as "entertained, proffered, or asserted by each with respect to the other of two or to each of the others of a group." See Webster's Third New International

Dictionary (Unabridged) (1961), p. 1493 (emphasis added). Given the common dictionary meaning of the word mutual, "mutual agreement" must mean agreement by each with respect to the other. The Plan's interpretation of "mutual agreement," as requiring merely agreement among some of the parties, violates the settled principle that a construction of a contract that renders some language useless or surplusage is to be avoided. See 17A C.J.S. Contracts § 297, p. 125.[3] The Plan's interpretation of "mutual agreement" would render the term "mutual" meaningless.

Because it is plain that "mutual agreement" requires agreement by all, the Plan's determination of the term as requiring agreement by less than all is clearly erroneous and unreasonable.

(b) When the Parties Intended that an Act Could be Performed Only by Unanimous Consent, They Spelled Out that Requirement Unambiguously.

The Plan next argues that when the parties intended that an act be performed only upon unanimous consent they spelled out that requirement unambiguously. The Plan notes that the Association Agreement required that all action be taken by "unanimous vote" and that a bargaining proposal could not be accepted without "unanimous consent." The

Plan states that, in view of this different language, it is evident that the parties intended something less than unanimity to amend the Plan.

The Plan's argument fails to persuade this Court. As stated above, the plain meaning of the word "mutual" implies that each member of the group is included. Consequently, the fact that the parties used the word unanimous in the Association Agreement and mutual in the Plan's articles does not indicate an intent to require a lesser agreement in the Plan's articles. Moreover, the Association agreement is separate and distinct from the articles of the Plan. Consequently, even if the terms "unanimous" and "mutual" may have slightly different meanings, the fact that the parties chose to use the word "unanimous" in one context and the word "mutual" in another does not demonstrate an intent to give different meanings to the two terms.

(c) The Fact that all Prior Amendments Were Made by Unanimous Consent Does Not Prove that Unanimous Concurrence Was Required.

Next the Plan argues that the arbitrator erroneously found that the fact that all prior amendments were made by unanimous consent proves that the Plan requires unanimous consent. This Court believes that the Plan misinterprets the

arbitrator. The arbitrator did not assert that this past practice proved that unanimous agreement was required. Rather, he merely stated that the Plan's past practice confirmed his interpretation. See Schlitz at 2394. Because this Court finds that the arbitrator correctly determined that "mutual agreement" clearly implies that all the parties were to agree, this Court need not address the question of whether the parties' past practices prove that unanimous concurrence was required.

(d) The Arbitrator Improperly Avoided Addressing a Presumption Against Unanimous Consent Incorporated into ERISA Law From the Common Law of Trusts.

Finally, the Plan argues that the arbitrator improperly avoided addressing a presumption against requiring unanimous agreement. The Plan states that this presumption was incorporated into ERISA law from the common law of trusts. In support of this assertion, the Plan cites Burud v. Acme Electric Co., Inc., 591 F. Supp. 238, 242 (D.C. Alaska 1984). The Burud court stated that:

> . . . Congress intended to incorporate into the ERISA common law of trust as it has evolved. Although it is unclear whether rule by the majority of the trustee committee has become the rule of decision in the majority of American jurisdictions, that rule is clearly

> the modern trend and is better suited to the management of business trusts in general and employee pension and welfare trusts in particular.

Id. at 245 (citations omitted and emphasis added).

The Burud court addressed the management of a pension plan and not its amendment. While it is clear that the trust and fiduciary model is appropriate for pension plan management, it is not clear that it is appropriate for the amendment of pension plans.

Moreover, the plan in Burud differs from that in our case. The Burud court observed that "the plan [in their case did] not expressly require actions taken by the trustees to be approved by unanimous vote . . . ." See id. at 242. In our case, the Plan clearly states that "mutual agreement" is required for amendment of the Plan.

Because this Court concurs with arbitrator's decision with respect to the meaning of "mutual agreement," the Court does not find that his holding was clearly erroneous.

2. Whether ERISA Overrides the Plan's Requirement of Mutual Assent

Whether ERISA law overrides the provision in the Plan which requires mutual agreement is a legal

determination. Accordingly, this Court will review de novo the arbitrator's decision with respect to this issue.

The arbitrator rejected the Plan's argument that the parties acted as fiduciaries and therefore were obligated to adopt the direct attribution method since it was in the best interest of the Plan participants and beneficiaries. See Schlitz at 2399. In rejecting the Plan's argument, the arbitrator relied upon the distinction between the administration or management and the amendment of a plan. See id. at 2396. The arbitrator held that Local 9 and the employers had a fiduciary duty with respect to the administration and management of the Plan and that they turned over this fiduciary duty to the Joint Committee. See id. The arbitrator found that the parties reserved power to amend the Plan to themselves and that this reservation of power was a collective bargaining power. See id. at 2397.

In its motion to vacate the arbitrator's award, the Plan argues that Schlitz, as a party to the Plan, had a fiduciary duty with respect to (1) amending the Plan in general and (2) amending the Plan to change the method of computing withdrawal liability.

(a). Schlitz's Fiduciary Duty With Respect to Amendment of the Plan

Although the Seventh Circuit has not addressed the issue, caselaw clearly holds that employers do not act as fiduciaries when they amend a plan.[5] In Amato v. Western Union International, Inc., the Second Circuit held that a company's officers "acted on behalf of a corporate employer and not as Plan fiduciaries in amending its pension plan." 773 F.2d 1402, 1417 (2d Cir. 1985) cert. denied, 474 U.S. 1113 (1986); see also Chait v. Bernstein, 645 F. Supp. 1092 (D.N.J. 1986), aff'd., 835 F.2d 1017 (3d Cir. 1987) (decisions of defendant to amend and terminate a pension plan are not governed by ERISA's fiduciary duties); Musto v. American General Corp., 861 F.2d 897, 911-912 (6th Cir. 1988) ("[t]he caselaw . . . makes it clear that when an employer decides to establish, amend, or terminate a benefits plan, as opposed to managing any assets of the plan and administering the plan in accordance with its terms, its actions are not to be judged by fiduciary standards." (emphasis added)).

The rationale for not imposing a fiduciary duty when an employer amends a pension plan becomes apparent when one examines the situations in which ERISA imposes a fiduciary duty. ERISA imposes a fiduciary duty upon those who exercise discretionary authority or control with respect

to the management or administration of a plan. See 29 U.S.C. § 1002(21)(A)[6]. ERISA law places upon plan administrators and managers a duty of loyalty not to engage in transactions in which they have a conflict of interest, see 29 U.S.C. § 1106 and a duty of care to act to the prudent man standard. See 29 U.S.C. § 1104. These duties are imposed because of the legitimate concerns that (1) plan administrators and managers will make decisions in their own best interests rather than the beneficiaries' best interests, (2) plan administrators and managers will not have proper concern when dealing with the money of others (the pension plan's beneficiaries) and (3) plan beneficiaries cannot properly monitor the activities of plan administrators and managers.

These concerns are not present when an employer or union bargains for or amends the terms of a plan. The law does not fear employers and unions acting in their own self-interest because each side can monitor the other's behavior and allowing the parties to reach a bargained for result leads to an efficient market allocation of resources. In fact, the law fears the imposition of a fiduciary duty in this context because it is likely that such a duty would discourage employers from creating pension plans. If ERISA told employers how much

they must contribute to pension plans, it is likely that many employers would refuse to set up plans.

The Musto court demonstrates the reluctance of Congress and the courts to impose a fiduciary duty where an employer negotiates for or amends a plan.

> There is a world of difference between administering a welfare plan in accordance with its terms and deciding what those terms are to be. A company acts as a fiduciary performing the first task, but not the second. As this court, speaking through Judge Celebrezze, declared . . .
>
> > "[n]either Congress nor the courts are involved in either decision to establish a plan or in the decision concerning which benefits a plan should provide. In particular, courts have no authority to decide which benefits employers must confer upon their employees; these are decisions which are appropriately influenced by forces in the market place and, when appropriate, by legislation."
>
> Congress . . . "has not prohibited an employer who is also a fiduciary from exercising the right accorded other employers" to amend pension plan provisions regarding unfunded condition benefits.

Musto at 911 (citations omitted and emphasis added).

In spite of the above case law which holds that employers do not have a fiduciary duty with respect to the amendment of a plan, the Plan cites several cases which it asserts support a contrary conclusion. These cases can be grouped into three categories: (1) those which hold that employers and unions have a fiduciary duty with respect to the administration and management of a plan or its assets; (2) those which involve a conflict of interest of an employer or union and (3) those which involve the amendment of something other than a pension plan. None of the cases cited by the Plan contradict the general rule that employers do not have a fiduciary duty with respect to the amendment of a plan.

(i) Cases Cited by the Plan Which Hold that Employers and Unions have a Fiduciary Duty with Respect to the Management or Administration of a Pension Plan.

The Plan cites two cases for the proposition that employers and union officials have fiduciary duties towards pension plans. The Plan first cites Freund v Marshall & Ilsley Bank, 485 F. Supp. 629 (W.D. Wis. 1979), for the proposition that corporate officers are fiduciaries. However, the Freund court merely held that the officers were fiduciaries insofar as they acted as plan trustees or plan administrators.

See id. at 634-35. This case does not state that employers or their corporate officers always act as fiduciaries or that they act as fiduciaries when they amend a plan.

Next, the Plan cites Local Union 2134, U.M.W. v. Powhatan Fuel, Inc., 828 F.2d 710 (7th Cir. 1987). However, this case, like Freund, merely holds that an employer or union acts in a fiduciary role to the extent it manages or administers a plan.

(ii) Cases Cited by the Plan Which Involve Conflicts of Interest Claims

Plaintiffs next cites three cases which are different than this case because they involve claims of interest. The Plan first cites Eaves v. Penn, 587 F.2d 453 (10th Cir. 1978). Eaves involved "unique circumstances" in which the defendant used his position in a profit sharing plan to convince the trustee to amend the plan so that the defendant could obtain control of the company's affairs. See id. 458-459.

> It is apparent that during his negotiations with the Eaveses surrounding the purchase of the company, Penn recommended to Glen R. Eaves, then the trustee of Glen's Profit--Sharing Plan, that the Plan invest large sums of money in company stock in order to finance the purchase-sale transaction. In rendering such advice, Penn sought and eventually

> obtained control of the company's affairs through his acquisition of legal title of all outstanding shares of stock. By virtue of his ownership, and his position as trustee of the New Plan, Penn became chairman of the board of directors, vice president and treasurer of the company and a member of the New Plan committee.

Eaves at 458. Thus, in Eaves there existed the possibility of self-dealing on the part of Mr. Penn. For this reason, the court imposed a fiduciary duty upon Mr. Penn.

The Plan next cites Brock v. Hendershott, 8 E.B.C. 1121 (D.C.S.D. Ohio 1987), aff'd, 840 F.2d 339 (6th Cir. 1988) for the assertion that a union agent is a fiduciary when he participates in the collective bargaining process by drafting of Plan documents. However, Brock, like Eaves involved the possibility of self-dealing. In Brock, the defendants owned significant interests in a company which received a percentage of the money spent by certain plans for dental services from a particular group of dentists. See id. at 1122. The court found that the defendants breached their fiduciary duties "by dealing with assets of the Plans not solely in the interest of the Plans' participants and beneficiaries, but rather for [their] own interests and for [their] own account." See id. at 1123.

Finally, the Plan cites Donovan v. Bierwirth, 680 F.2d 263 (2nd Cir. 1982). Donovan, like Eaves and Brock, involve the possibility of a conflict of interest. The Donovan court held that corporate officers who were also plan trustees breached their fiduciary duty to the plan when they failed to resign as trustees when their positions as corporate officers during a take-over bid came into conflict with their roles as trustees. Donovan at 276.

(iii) Cases Cited by the Plan which Involve the Amendment of Something Other than a Pension Plan

The Plan finally cites a Seventh Circuit case, The Chicago Board of Options v. Connecticut General Life Insurance Company, 713 F.2d 254 (7th Cir. 1983). However, in Connecticut General, the Seventh Circuit addressed the amendment of an annuity contract and not the amendment of a pension plan. See id. at 255.

(b). Fiduciary Duty With Respect to Changing the Method of Computing Withdrawal Liability

The Plan next asserts that, even if Schlitz does not owe a fiduciary duty with respect to amending the Plan, it is under such a duty concerning the method of computing withdrawal liability. In order to determine whether Schlitz is

under a fiduciary duty, this Court must decide whether the choice of the methods of computing withdrawal liability is an act of plan management or administration. Unfortunately, ERISA law does not define the terms administer and manage. Consequently, this Court cannot merely compare the definitions of those terms with the decision to change the method of computing withdrawal liability to determine if a fiduciary duty should be imposed.

However, this Court can determine whether a fiduciary duty is required by comparing the contexts in which ERISA imposes a fiduciary duty with those in which it does not impose such a duty. As stated above, ERISA law recognizes two roles of employers and unions with respect to pension plans. First, employers and unions act as fiduciaries with respect to the administration and management of pension plans. ERISA law imposes a fiduciary duty in this context in order to protect plan beneficiaries from possible self-interested dealings by plan administrators and managers. Second, employers and unions act in a bargaining and nonfiduciary role with respect to the negotiation and amendment of the terms of pension plans. ERISA law does not impose a fiduciary duty in this instance because it trusts that they will monitor each other's behavior.

This Court believes that the Employers and Local 9 acted in a role more similar to that of a negotiator than that of fiduciary when they chose to change the method of withdrawal liability for two reasons: (1) the choice of withdrawal liability does not affect total amount which the Employers owe to the Plan and (2) the choice does affect how liability is divided among the Employers.

First, the choice of the method of withdrawal liability does not affect the total unfunded liability of the Employers to the pension plan. Instead, the different methods of calculation merely shift responsibility for unfunded vested benefits among the Employers. Since the choice does not affect the overall amount of money owed to the pension plan, the Employers can be left to bargain among themselves over methods of withdrawal liability. There is no fear that they will choose a method which will help them but hurt the Plan. Because there is no fear of the possibility of a conflict of interest, there is no great need to impose a fiduciary duty upon them.

Second, the choice of method of withdrawal liability affects how liability for unfunded vested benefits is divided among the Employers. Since the amount of total unfunded vested benefits owed by the Employers to the Plan is fixed,

any increase in liability which a method may impose on one employer decreases the liability of the other employers. Thus, there exists a substantial concern that a group of employers will act in concert to change the method of withdrawal liability in order to shift their responsibility for unfunded vested benefits to another employer. In our case, there is a legitimate fear that Miller and Pabst may have acted together in order to impose some of their liability for unfunded vested benefits onto Schlitz. Moreover, the Plan's involvement in the amendment process does not alleviate this fear. Since the Plan did not act as Schlitz' representative at the amendment meetings, there is no reason to believe that the Plan protected Schlitz's interests.

The Court should note that the Plan cites an arbitration decision which holds that the choice of computing withdrawal liability is a part of a plan's administration. See Hertz Corp. and Commission Salesman, Drivers and Helpers, Local 187 Pension Fund, 4 EBC 1367, 1384 (1983). The arbitrator in Hertz held that the pension plan committee could adopt, without the consent of the union and the employers, an amendment using an optional method of calculating employer's annual withdrawal liability payments.

The arbitrator in Hertz relied heavily upon two factors when making his decision. First, the arbitrator noted under the plan in question, the administrative committee was given power to amend the plan. See Hertz at 1374. Section 8.7(o) of the Plan in question provided in part:

> **Powers and Duties.** In addition to any implied powers and duties which may be necessary to carry out the provisions of the Plan, the Committee shall have:
>
> . . .
>
> (o) . . . the power to amend the Plan at any time and from time to time to the same extent and with the same like force and effect as if amended by agreement between the Employers and the Unions, except that no action may be taken to increase the contribution commitment of any Employer
>
> . . .

The arbitrator later discounted the effect of the language excepting from the Committee's power the ability to increase the contribution and commitment of any employer. See id. at 1383.

The arbitrator next relied upon evidence that the Committee chose to change the method of computing withdrawal liability for administrative reasons. See id. at 1382 ("the Plan's actuary . . . testified that the Plan had the

kind of record-keeping problems foreseen by Congress, and for that reason the Plan chose the optional method provided in clause (II)"). Thus, in Hertz, the decision to change the method of calculating withdrawal liability affected the administration and management of the plan. By choosing the optional method, the pension plan committee reduced the plan's administrative costs and thereby helped the plan's beneficiaries.

In our case, neither of the above conditions considered by the arbitrator in Hertz are present. First the Plan does not contain a clause giving the administrators of the Plan the power to amend the Plan without the consent of all the employers. Second, the Plan provides no evidence that it changed the method of calculating withdrawal liability for - administrative reasons. Instead, the plan argues that the direct attribution method is superior to the presumptive method because it more fairly allocates liabilities among participating employers. See the Plan's Memorandum, p. 34 (the direct attribution method "has a basic and inherent fairness to it. Each Employer pays its liability based upon benefits accrued by its own employees."). It is possible that the direct attribution method is fairer towards the Employers than the presumptive method. However, ERISA law does not

address the issue of equity among employers. Rather, it imposes a fiduciary duty solely to protect the interests of plan beneficiaries. Since there is no evidence that the choice of the method of withdrawal liability affects plan beneficiaries in our case, it is not covered by ERISA's fiduciary duty.

D. Whether the Addition of Interest for the Year 1981 by the Plan in Calculating the Payment Schedule was Correct Under MPPAA

Schlitz withdrew from the Plan in September of 1981. Pursuant to 29 U.S.C. §§ 1391 and 1399, the Plan calculated the withdrawal liability of Schlitz as of December 31, 1980 and added interest from that date on to the unfunded vested benefits. The arbitrator found the addition of interest for the period between December 31, 1980 and January 1, 1982 to be unfounded under the MPPAA. The arbitrator's decision involved a purely legal determination concerning the meaning of § 1399. Consequently, this Court shall review his decision de novo.

29 U.S.C. § 1399 (c) sets forth the payment requirements for withdrawal liability:

> [A]n employer shall pay the amount determined under § 1391 . . . over the period of years necessary to amortize the amount in level payments determined under subparagraph

> (C), calculated as if the first payment were made on the first day of the Plan year following the Plan year in which the withdrawal occurs and as if each subsequent payment were made on the first day of each subsequent Plan year. Actual payment shall commence in accordance with paragraph (2).

Schlitz argues that under this provision the Plan cannot properly charge it interest for the period from December 31, 1980 to January 1, 1982. The Plan argues that such interest is proper under this provision.

In determining whether it was proper for the Plan to add interest from December 31, 1980 to January 1, 1982, this Court must determine: (1) whether the Plan can properly charge Schlitz for interest pursuant to § 1399(c)(1), and (2) if the Plan can properly charge interest, whether that interest can date back to December 31, 1980.

1. Whether the Plan Can Properly Charge Schlitz Interest Pursuant to § 1399(c)(1)

Section 1399(c)(1) provides that an employer shall pay its withdrawal liability "over the period of years necessary to amortize the amount in level payments." (Emphasis added). The inclusion of the word amortize in this section makes clear that the Plan can properly charge Schlitz interest. Black's Law Dictionary defines "amortization" as follows:

> In accounting, the allocation (and charged to expense) of the cost or the basis of an intangible asset over its estimated useful life . . . . A reduction in a debt or fund by periodic payments covering interest and part of principal . . . an "amortization plan" for the payment of an indebtedness is one where there are partial payments of the principal and accrued interest, at stated periods for a definite time, at the expiration of which the entire indebtedness will be extinguished.

Deluxe Black's Law Dictionary, 6th ed., p. 84, 1990 (emphasis added); see also Lommis Armored, Inc. and Central State's Pension Fund 8 E.B.C. 1899, 1920. Thus, the concept of amortization includes the payment of interest by the debtor.[7]

2. Whether the Plan Could Properly Charge Schlitz for the Interest Accrued Between December 31, 1980 and January 1, 1982

The Arbitrator determined that the Plan could not properly charge Schlitz for the interest which accrued between December 31, 1980 and January 1, 1982. In support of his determination, the Arbitrator stated:

> In substance, it appears to this Arbitrator that in view of the clear statutory declaration that the payment schedule shall be determined as if the first payment is to be made on the first day of the plan year following withdrawal, which,

> in this case would be January 1, 1982, in view of the fact that the statute makes no provision for the payment of interest except on overdue payments, it is not correct to assess pre-demand interest on a withdrawing employer . . .
>
> The critical point in the mind of this Arbitrator is that, although the statute requires the withdrawal liability to be calculated as of the end of the Plan year immediately preceding the year of withdrawal, the statute does not say that money is due at that time. Congress selected a logical date to be used for the calculation of withdrawal liability. However, Congress also provided a commencement date for the payment which is as if the first payment were made on the first day of the Plan year following the Plan year in which the withdrawal occurs.

Milwaukee Brewery Workers' at 2405 (emphasis added).

The arbitrator's interpretation is confusing. First, he interprets § 1399(c)(1) to provide that the plan's amortization schedule is to be determined as if the withdrawing employer is not required to make its first payment until the first day of the plan year following withdrawal ("as if the first payment is to be made on the first day of the plan year following withdrawal"). The arbitrator appears to have based his decision on this first interpretation. Next, the arbitrator states

that a withdrawing employer's liability is to be determined as if he failed to make his first payment until the first day of the following year ("as if the first payment were made on the first day of the Plan year following . . . withdrawal").

The arbitrator's differing interpretations of § 1399 (c)(1) are troubling because they lead to differing results concerning whether the Plan properly assessed Schlitz interest between December 31, 1980 and January 1, 1982. Under the arbitrator's first interpretation, no interest can be charged since the withdrawing employer is not obligated to commence payments until the first day of the year after withdrawal. Under the arbitrator's second interpretation, interest can be charged since the withdrawing employer is presumed not to have made its required payments until the first day of the year after withdrawal even though its obligation accrued prior to that date. This interest can relate back to the date as of which the withdrawal liability was calculated, in our case December 31, 1980. See Huber v. Casablanca Industries, Inc., 916 F.2d 85, 96 (3rd Cir. 1990).[8]

The plain language of § 1399(a)(1) reveals that the arbitrator's second interpretation statement is correct. Section 1399(c)(1) does not provide that the employer's payment schedule is to be determined as if the employer's first

payment is required to be made on the first day of the Plan year following withdrawal. Rather, it requires that the employer pay the amount of its withdrawal liability over an amortization schedule calculated as if the employer made its first payment on the first day of the Plan year following withdrawal. See § 1399(c)(1) ("calculated as if the first payment were made on the first day of the Plan year following . . . withdrawal"). Accordingly, the Plan is entitled to interest calculated from the date as of which withdrawal was calculated, December 31, 1980, to the first day of the Plan year after withdrawal, January 1, 1982.

In spite of the clear language of § 1399(c)(1), Schlitz argues that the imposition of interest is improper because (1) such interest will lead to a double assessment of interest against employers, (2) Congress rejected a proposed provision which would have allowed interest to be charged from the date of an employer's withdrawal and (3) such interest is inconsistent with § 1399(c)(4).

Schlitz first argues that the imposition of interest is improper because it would lead to a double assessment of interest against an employer. Schlitz notes that § 1399(c)(2) provides that an employer must begin payments within sixty days after the date the plan sponsor makes its demand. Since

§ 1399(b)(1) requires that a demand for withdrawal liability payments be made "as soon as practical," the timing of withdrawal may permit a demand letter to be issued and payments to begin prior to the conclusion of the Plan year in which the withdrawal takes place. This occurred in our case. At that point, any late payment will generate the accrual of an interest charge under § 1399(c)(3). In addition, a default by the employer will require an interest charge on the outstanding balance under § 1399(c)(5). Schlitz states that § 1399(c)(3) and (5) generate a double assessment of interest if interest is also included in the payment schedule during the year of withdrawal. See Casablanca Industries, Inc. v. U.F.C.W. Local 29 23 Giant Eagle Pension Fund, 7 EBC 2705, 2728 (1986) (Jaffe, ARB.) ("an interest charge would result in double assessment of interest against a withdrawing employer").

Schlitz is correct that under this Court's interpretation of § 1399(c)(1) a withdrawing employer may be charged both a penalty interest pursuant to § 1399(c)(3) and (5) and an interest charge pursuant to § 1399(c)(1). However, these two possible interest payments serve different functions. Interest charges pursuant to § 1399(c)(3) and (5) are penalty payments which accrue only if an employer fails to meet its obligation

to make payments. The interest pursuant to § 1399(c)(1) is not a penalty. Rather, it arises because of the amortization of an employer's withdrawal liability.

The interest charged under § 1399(c)(1) during the year of an employer's withdrawal is inexact and is likely to lead to a greater interest payment than would be charged under normal amortization schedules. However, this tendency to overcharge employers during the first year is not a penalty and does not punish employers who do not meet their obligations. In Huber, the Third Circuit noted:

> If the employer pays some quantum of interest not earned, that is fortuity not penalty. As the [Pension Benefit Guaranty Corporation] notes in discussing this very point, "Congress was interested in rough equity, not precision." Brief of Amicus PBGC at 36. An assumption that payments will begin on the first day of the following year after withdrawal -- not before and not after -- is just that sort of rough equity. In any event, an employer could avoid this possibility by withdrawing near the end of the plan year.

Huber at 99. Because the interest provisions of these sections serve different purposes, the possibility that an employer might face multiple interest charges is not a double penalty.[9]

Schlitz next argues that Congress made clear its intent not to require pre-demand interest by rejecting a proposed

provision which would have allowed interest to be charged from the date of an employer's withdrawal. Proposed ERISA section 4201(e)(5) provided that "interest shall be charged from the date of the withdrawal at rates based on prevailing market rates for comparable obligations in accordance with the regulations of the corporation." This proposed provision clearly provided that interest was to be charged from the date of an employer's withdrawal. However, § 1399(a)(1) also allows a plan to charge interest during the year of withdrawal. Moreover, the interest to be charged under § 1399(a)(1) relates back to the date of calculation, not just the withdrawal date. Consequently, the fact that Congress chose to enact § 1399(c)(1) instead of proposed § 4201(e)(5) provides no evidence that Congress intended to prevent the imposition of interest during the year of withdrawal.

Finally, Schlitz argues that assessing interest for the year of withdrawal is inconsistent with § 1399(c)(4). Section 1399(c)(4) provides:

> The employers shall be entitled to prepay the outstanding amount of unpaid annual withdrawal liability payments determined under paragraph (1)(c), plus any accrued interest, if any, in full or in part, without penalty.

(Emphasis supplied by Schlitz). Schlitz argues that if predemand interest is permitted, the words "if any" will be meaningless, as a withdrawn employer that chose to prepare its withdrawal liability under this section would invariably owe accrued interest. However, as the Third Circuit notes in Huber, this argument incorrectly assumes that the only type of prepayment to which § 1399(c)(4) refers is a payment made immediately upon receipt of the demand letter. See Huber at 99. "The employer may prepay the outstanding principal amount of withdrawal liability at any time during the amortization period, including at a point immediately after a scheduled payment, at which point all accrued interest has been paid." See id. Because § 1399(c)(4) covers situations other than those covered by § 1399(c)(1), this Court's reading of § 1399(c)(1) is consistent with § 1399(c)(4).

VI. SCHLITZ'S MOTION TO CONFIRM THE ARBITRATOR'S AWARD

Since Schlitz's motion addresses the same issues put forth in the Plan's motion, it is not necessary for this Court to separately address Schlitz's motion.

V. SUMMARY

Under the foregoing reasoning, this Court **GRANTS IN PART** and **DENIES IN PART** the parties' motions. This Court (1) **AFFIRMS** the arbitrator's decision to deny the Plan's motion to dismiss; (2) **AFFIRMS** the arbitrator's finding that the Plan required unanimous consent of all employers in order to adopt the direct attribution method of calculating Schlitz's withdrawal liability; (3) **AFFIRMS** the arbitrator's finding that ERISA law does not impose a fiduciary duty upon a Plan's members when they decide whether to change the methods of calculating withdrawal liability and (4) **VACATES** the arbitrator's decision that the Plan improperly included interest for the period between December 31, 1980 and January 1, 1982 in calculating Schlitz's payment schedule.

So **ORDERED** this 6th day of June, 1991, at Milwaukee, Wisconsin.

s/s_____
ROBERT W. WARREN
UNITED STATES DISTRICT JUDGE

---

[1]The notice referred to as "described in paragraph (1)" is found in 29 U.S.C. § 1399(b)(1), which provides:

> As soon as practicable after an employer's complete or partial withdrawal, the Plan sponsor shall --
>
> (A) notify the employer of --
>
> (i) the amount of the liability and
>
> (ii) the schedule for liability payments, and
>
> (B) demand payment in accordance with the schedule.

[2]Sections 1381 to 1399 address an employer's withdrawal liability.

> [3]17A C.J.S. Contracts § 297 provides in part: A construction neutralizing, nullifying, or annulling one provision should not be adopted if the contract can be construed so as to give effect to all of its provisions, and a construction rendering a provision, term, or part meaningless, superfluous, useless, inextricable, or nugatory should be avoided.

(Emphasis added).

[4]The Plan also argues that requiring unanimous agreement is improper because it allows a single employer to veto an amendment agreed upon by Local 9 and the other Employers. While the ability to veto may be problematic in the context of plan management and administration where the parties act as fiduciaries, it is appropriate in the context of plan amendment where each party acts in a bargaining mode and protects its own interests. See infra.

[5]The Seventh Circuit has, however, addressed the question of whether an employer or union has a fiduciary duty when acting in a negotiating role. In United Ind. Flight Officers v. United Air Lines, the Seventh Circuit held that ERISA imposes no fiduciary duty where an employer or union is engaging in negotiation or collective bargaining. 756 F.2d 1262, 1268 (7th Cir. 1985) ("the duties imposed on a fiduciary are inconsistent with the demands of negotiation and collective bargaining").

[6]ERISA defines fiduciary in 29 U.S.C. § 1002(21)(A) as:

> (21)(A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect with respect to any monies or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. . . .

Because the parties did not render any investment advice for the Plan, subsection (ii) does not apply to our case. Subsections (i) and (iii) create a fiduciary duty in those who exercise discretionary authority or control respecting the management and administration of pension plans.

[7]Schlitz argues and the Arbitrator ruled that it is improper to assess pre-demand interest on a withdrawing

employer by virtue of the word "amortize." See Milwaukee Brewery Workers' at 2405. Schlitz and the Arbitrator are correct that the word amortize alone did not give the Plan the authority to assess pre-demand interest on Schlitz. However, the inclusion of the word amortize in § 1399(c) makes clear that the Plan can properly charge Schlitz interest for the time period over which the payment schedule is amortized.

Schlitz also argues that the statute makes clear when the Plan can properly charge interest. In support of this argument Schlitz cites § 1399(c)(2), (3), (4), (5) as well as §§ 1391 and 1396. While these sections do explicitly state that a plan can charge an employer interest in certain circumstances, the inclusion of the word amortize in § 1399(c)(1) make clear that the Plan can charge Schlitz interest in our case as well.

[8]"[W]hile the liability for unfunded vested benefits became accelerated on the date the employer withdrew, it did not magically appear on that date. Unfunded vested benefits are benefits which are 'promised and earned but not yet funded' as of the calculation date. '[T]he liability for UVBS represents a preexisting obligation on the employer's part, and is not simply 'incurred' as of the date of withdrawal.' Dur Art & Technicolor v. Motion Picture Local 702 Pension Fund, 10 EBC 1326, 1328 (S.D.N.Y. 1988). In other words, the unfunded vested benefit calculation represents an employer's share of the amount needed for a fund to break even as of the calculation date. Due to the time value of money, that amount will grow between the calculation date and the withdrawal date." Id. (footnotes omitted and emphasis in the original).

[9]In its reply brief, Schlitz notes that a court in the Southern District of New York remanded a case similar to

ours to the magistrate to determine whether a double payment situation existed." See Du Art Film Laboratories v. Motion Picture Local 702 Pension Fund, 10 EBC 1326, 1328 (S.D.N Y. 1988). In Du Art, the possibility existed that the employer was paying both its regular contributions and an amount for its withdrawal liability for the same period of time. This situation involved a true double payments situation since an employer is required to pay either its regular contributions or a part of its withdrawal liability. In contrast, Schlitz could, at most, be required to pay two different types of interest pursuant to its withdrawal liability.

MILWAUKEE BREWERY WORKERS'

PENSION PLAN

AS AMENDED*

* Includes	Amendment I	-	effective 3/1/54
	Amendment II	-	effective 1/1/56
	Amendment III	-	effective 6/1/59
	Amendment IV	-	effective 6/1/64
	Amendment V	-	effective 6/1/67
	Amendment VI	-	effective 6/1/69
	Amendment VII	-	effective 6/1/71
	Amendment VIII	-	effective 6/1/73
	Amendment IX	-	effective 6/1/75
	Amendment X	-	effective 6/1/77
	Amendment XI	-	effective 6/1/79

WHEREAS, the Milwaukee Brewery Workers' Pension Plan, established March 1, 1954, by an agreement dated August 16, 1954, between the undersigned parties, provides in Article IX that the Plan may be modified, altered, or amended upon mutual agreement of the parties thereto, pursuant to which the Plan has heretofore been amended, effective March 31, 1954, January 1, 1956, June 1, 1959, June 1, 1964, June 1, 1967, June 1, 1969, June 1, 1971, June 1, 1973, June 1, 1975 and June 1, 1977.

WHEREAS, a further amendment to said Plan is deemed advisable,

NOW, THEREFORE, this Agreement provides that the Milwaukee Brewery, Workers' Pension Plan is amended in its entirety June 1, 1979 by replacing it with the Plan hereto attached.

FOR BREWERY WORKERS
LOCAL UNION NO. 9,
D.A.L.U., AFL-CIO:

FOR THE EMPLOYERS:

MILLER BREWING COMPANY
BY s/s
BY s/s Kenneth Mueller
Committee Member

PABST-BREWING COMPANY
BY s/s
BY s/s John Adams
Committee Member

JOS. SCHLITZ BREWING COMPANY
BY s/s
Committee Member

BY s/s H. L. Fessler
BY s/s
Committee Member

Dated 7-29-80

MILWAUKEE BREWERY WORKERS PENSION PLAN

Table of Contents

Page

ARTICLE I DEFINITIONS

1.01 Accrual Service 1
1.02 Act 1
1.03 Actuarial Equivalent 1
1.04 Bargaining Unit 1
1.05 Employee 2
1.06 Employer 2
1.07 Effective Date 2
1.08 Fund 3
1.09 Joint Committee 3
1.10 1953 Collective Bargaining Agreement 3
1.11 Pensioner 3
1.12 Plan 3
1.13 Plan Actuary 4
1.14 Prior Plan 4
1.15 Trustee 4
1.16 Union 4
1.17 Vesting Service

ARTICLE II SERVICE

2.01 Past Service 4
2.02 Hour of Work 5
2.03 Future Service for Vesting 7
2.04 One Year Break in Service 7
2.05 Future Service for Benefits 8
2.06 Reemployment On or After January 1, 1977 9

Page

(a) Cancellation of Service 9
(b) Prior Plan Service Credited 10
(c) Benefits Under Provisions of Prior Plan 11
(d) Benefits Following Reemployment 11
2.07 Transfers 12
(a) Transfers Out of Bargaining Unit 12
(b) Transfers Into Bargaining Unit 13

ARTICLE III BENEFITS

3.01 Normal Retirement Benefit 13
3.02 Disability Retirement Benefit 14
3.03 Vested Retirement Benefit 15
3.04 Early Retirement Benefit 16
3.05 Incentive Retirement Benefit 18
3.06 Early Retirement Supplemental Benefit 19
3.07 Surviving Spouse Automatic Benefit 20
3.08 Designated Co-Pensioner Benefit 22
3.09 Pensioner Benefit 23

ARTICLE IV PAYMENT OF BENEFITS

4.01 Normal, Disability, Vested and Early Retirement Benefits 25
(a) Life Only 25
(b) Joint and 50% to the Surviving Spouse Benefit 25
(c) Co-Pensioner Option 28
(d) Notice and Explanation of Optional Benefits 30
(e) Termination of Disability Retirement 31

	Benefits	
4.02	Incentive Retirement Benefit	32
4.03	Early Retirement Supplemental Benefit	32
4.04	Offset Against Retirement Benefits Under Another Plan	33

ARTICLE V TOTAL AND PERMANENT DISABILITY DETERMINATION 34

ARTICLE VI CONTRIBUTIONS BY EMPLOYERS 35

ARTICLE VII DISCONTINUANCE OF THE PLAN BY AN EMPLOYER 36

ARTICLE VIII TERMINATION OF THE PLAN

8.01	Termination by Joint Committee	38
8.02	Notice to Pension Benefit Guaranty Corporation	38
8.03	Allocation of Fund	38

ARTICLE IX AMENDMENT OF THE PLAN 41

ARTICLE X ADMINISTRATION PROVISIONS

10.01	Determination of Benefits	41
10.02	Payments to Incompetents	42
10.03	Record of Retired Employees	42
10.04	Non-Alienation of Benefits	43

Page

ARTICLE XI FUND 44

ARTICLE XII ADMINISTRATION OF THE PLAN

12.01	Joint Committee - Composition	46
12.02	Employer Members - Appointment	46
12.03	Employer Members - Removal	47
12.04	Union Members - Appointment and Removal	47
12.05	Effective Date of Member Appointments	47
12.06	Joint Committee Members - Compensation	48
12.07	Joint Committee - Quorum and Voting	48
12.08	Joint Committee - Responsibilities and Powers	48
12.09	Reliance and Liability	54
12.10	Arbitration	54
12.11	Joint Committee - Limitations on Powers	55
12.12	Joint Committee - No Precedents	56

ARTICLE XIII RETIREMENT AGE 56

ARTICLE XIV GENERAL

14.01	Internal Revenue Code Qualification and Compliance with Act	57
14.02	Gender	58
14.03	Titles to Sections	58
14.04	Merger, Consolidation or Transfer of Assets and Liabilities to Other Plans	58
14.05	Service in More than One Fiduciary Capacity	59
14.06	Payments To and From the Plan	59
14.07	Savings Clause	60

MILWAUKEE BREWERY WORKERS' PENSION PLAN

ARTICLE I DEFINITIONS

The following words and phrases whenever used herein are defined as follows:

1.01 Accrual Service. "Accrual Service" means the sum of any Past Service and of any Future Service for Benefits for which credit is provided under 2.01 and 2.05, respectively.

1.02 Act. "Act" means the Employee Retirement Income Security Act of 1974, as in effect from time to time.

1.03 Actuarial Equivalent. "Actuarial Equivalent" means a benefit of equivalent value when computed on the basis of actuarial tables and rates of interest applicable to this Plan as selected by the Plan Actuary.

1.04 Bargaining Unit. "Bargaining Unit" means the group or groups of persons represented by the Union and covered by the 1953 Collective Bargaining Agreement or any successor collective bargaining agreement between the Union

and a signatory, or signatories, of the 1953 Collective Bargaining Agreement.

1.05 Employee. "Employee" means any person who is hired by an Employer before his 60th birthday and who on or after March 1, 1953 shall have been or shall be:

(a) employed by an Employer in the Bargaining Unit, or

(b) on the seniority list of an Employer established for such Bargaining Unit.

Any person in the Bargaining Unit, employed by an Employer, who was placed on leave of absence by such Employer because of illness shall be considered an Employee only if such leave commenced on or after March 1, 1951.

1.06 Employer. "Employer" means an employer:

(a) which is a party to the 1953 Collective Bargaining Agreement or any successor collective bargaining agreement between the Union and a signatory, or signatories, of the 1953 Collective Bargaining Agreement, and

(b) which at the time shall be making contributions to the Fund in accordance therewith.

If an Employer has more than one place of business, the term "Employer" shall only apply to the place or places of business covered by a collective bargaining agreement requiring contributions to the Plan.

1.07 Effective Date. "Effective Date" means March 1, 1954.

1.08 Fund. "Fund" means the fund established by contributions made by the Employers in accordance with the provisions of Article VI hereof.

1.09 Joint Committee. "Joint Committee" means the committee provided for in accordance with Article XII hereof.

1.10 1953 Collective Bargaining Agreement. "1953 Collective Bargaining Agreement" means the collective bargaining agreement dated July 28, 1953 between the Union and the Brewery Proprietors of Milwaukee, Wisconsin.

1.11 Pensioner. "Pensioner" means any person whose employment with an Employer was terminated by death or otherwise and who at the time of such termination met the necessary age and service eligibility requirements to qualify himself or his spouse for a benefit under the provisions of the Prior Plan.

1.12 Plan. "Plan" means the Milwaukee Brewery Workers' Pension Plan.

1.13 Plan Actuary. "Plan Actuary" means an individual appointed by the Joint Committee who is an enrolled actuary under the Act and a member of the American Academy of Actuaries or a member of a firm of consulting actuaries, one or more of the members of which is a member of the American Academy of Actuaries, to perform the usual duties of actuary in connection with the administration of the Plan, including determination of the range of possible Employer contributions, and to provide such other services as may be required by the Joint Committee.

1.14 Prior Plan. "Prior Plan" means the plan which is replaced, effective June 1, 1977, by the plan set forth herein.

1.15 Trustee. "Trustee" means the bank or banks or trust company or trust companies designated in accordance with Article XI hereof to hold and invest the Fund and to pay benefits, fees and expenses as authorized by the Joint Committee.

1.16 Union. "Union" means Brewery Workers Local Union No. 9, D.A.L.U., AFL-CIO.

1.17 Vesting Service. "Vesting Service" means the sum of:

(a) any Past Service determined under 2.01, and

(b) any Future Service for Vesting for which credit is provided under 2.03.

ARTICLE II SERVICE

2.01 Past Service. Past Service shall be credited to each Employee who is in the employ of an Employer on or after June 1, 1977 equal to "Vesting Service" and "Accrual Service" accrued to January 1, 1978 as those terms are defined and to which such Employee is entitled under the applicable provisions of the Plan as in effect on May 31, 1977 or would have been entitled if such provisions had continued in effect, except that in computing such "Accrual Service", the table set out in 2.05 hereof (but not the definition of Hour of Work) shall be used in determining "Future Service for Benefits" for calendar year 1977.

2.02 Hour of Work. An Employee shall be deemed to have completed an Hour of Work for purposes of 2.03 and 2.04 for each hour for which the Employee is directly or indirectly compensated, or entitled to be compensated, by the Employer:

(a) for the actual performance of work,

(b) other than for the actual performance of

work if such hour is within a customary work period and within -

(1) a holiday or vacation for which the Employee receives pay, as provided for in the then current collective bargaining agreement between the Union and his Employer,

(2) a period during which an Employee is disabled and unable to work because of a physical or mental disability resulting from an industrial injury or sickness suffered in the employment of an Employer and compensable under the Worker's Compensation Act, or

(3) the initial 501 hours of any other continuous period during which the Employee performs no work, except an hour for which such compensation is required in order to comply with an unemployment compensation or disability insurance law.

In addition, an Employee shall be deemed to have completed an Hour of Work for each other hour, if any, for

which back pay is awarded or agreed upon and for each hour within a customary work period and within a period for which the Employee as a member of the Union is granted leave of absence to perform service for the Union in accordance with the then current collective bargaining agreement between the Union and the Employer.

Further, if an Employee left the employ of an Employer to enter the armed forces of the United States under circumstances entitling the Employee to reemployment rights under applicable law and returns to the employ of his former Employer during the period within which his reemployment rights are guaranteed by law, to the extent the Employee would have performed work for the Employer had he not entered the armed forces the Employee shall be deemed to have completed an Hour of Work for each hour within a customary work period which is during the Employee's period of service in the armed forces and during the period

after his discharge from such armed forces during which his reemployment rights are guaranteed by law.

Each Hour of Work shall be attributed to the period in which the work is performed or to which the compensation relates.

2.03 Future Service for Vesting. For purposes of the Plan, an Employee who accrues 1,000 Hours of Work or more in the calendar year ending on December 31, 1978 or in any calendar year thereafter, shall be credited with a year of Future Service for Vesting; except that the amount of Future Service for Vesting credited in any calendar year shall not be less than the fraction of a year of Future Service for Benefits as described in 2.05 credited for such year.

2.04 One Year Break in Service. For purposes of the Plan, completion of less than 500 Hours of Work in the calendar year ending on December 31, 1978 or in any calendar year thereafter shall be deemed a One Year Break in Service.

2.05 Future Service for Benefits.

(a) General Rule. Future service for Benefits shall be credited to an Employee for each calendar year after December 31, 1977 based on Hours of Work which accrue while an Employee is employed by an Employer in the Bargaining Unit, on the following basis:

Hours of Work	Portion of a Year's Future Service for Benefits Credit
1,000 or over	.0
800 or over but less than 1,000	.8
600 or over but less than 800	.6
500 or over but less than 600	.5
less than 500	None

(b) Special Rule for Employees Who Terminate At or After Age 65 and On or After June 1, 1979. In the event that an Employee's employment with the Employer terminates on or after June 1, 1979, and on or after his 65th birthday, the last year or portion of a year of Future Service for Benefits which shall be credited to the Employee shall be for the later of the calendar year 1979 or the calendar year of the

Employee's 65th birthday. Future Service for Benefits for such calendar year shall be determined in accordance with the schedule set forth under (a) of this 2.05 and shall be based on the Hours of Work which accrue while an Employee is employed by an Employer in the Bargaining Unit and prior to the later of May 31, 1979, or the last day of the month of the Employee's 65th birthday, and shall also be based on the Hours of Work attributable to all periods of vacation:

(1) which were accrued on the December 31 immediately preceding the later of May 31, 1979, or the last day of the month of the Employee's 65th birthday and were not compensated prior to such day,

(2) which accrued in the later of calendar year 1979 or the calendar year of the Employee's 65th birthday and were accrued prior to the later of May 31, 1979 or the last day of the month of the Employee's 65th birthday, or

(3) which were to the credit of the Employee in the vacation bank on the later of May 31, 1979, or the last day of the month of the Employee's 65th birthday.

2.06 Reemployment On or After January 1, 1977.

(a) Cancellation of Service. If an Employee's employment with the Employer is terminated on or after January 1, 1977 and before he has accrued at least ten years of Vesting Service, all of his Vesting Service and Accrual Service shall be cancelled. If he is later reemployed by an Employer, such cancelled Vesting Service and Accrual Service shall be reinstated on the earlier of:

(1) the date he completes 1,000 Hours of Work in the calendar year in which such reemployment occurs or in a later calendar year, if the Vesting Service so cancelled exceeds the number of calendar years immediately preceding the calendar year in which such reemployment occurs in which he has One Year Breaks in Service, or

(2) the date on which such reemployment occurs, if the Employee is employed:

(A) within three months after the date of his quit,

(B) within one year after the date of his discharge, or

(C) within three years after the date of his layoff.

(b) Prior Plan Service Credited. If an Employee who terminated employment with the Employer prior to June 1, 1977 is reemployed by an Employer on or after that date, and if under the provisions of Section 3 of Article II of the Milwaukee Brewery Workers' Pension Plan effective June 1, 1973 the Employee would have been entitled to add his "credited service" as defined in such provisions to service credited to him after reemployment had such provisions continued in effect, such "credited service" shall be Past Service under this Plan.

(c) Benefits Under Provisions of Prior Plan. Benefits for which an Employee is eligible under the provisions of the Plan set out herein shall be reduced by the Actuarial Equivalent of any benefits paid (other than benefits payable as a result of total and permanent disability) or payable to him under the Prior Plan and based on his Accrual Service.

(d) Benefits Following Reemployment. If an Employee terminates employment with an Employer on or after June 1, 1979 and is thereafter reemployed by the Employer, the amount of benefits, if any, under (b) of either 3.01, 3.02, 3.03, 3.04, 3.05, 3.06, 3.07, or 3.08 for which he or his spouse or designated co-pensioner may thereafter become eligible under the Plan shall be determined by applying all of the Plan provisions except that the portion of his benefit attributable to Accrual Service accrued prior to the date of such termination shall be based on the rate in such (b) in effect on such date.

2.07 Transfers.

(a) Transfer Out of Bargaining Unit. If an Employee is or has been transferred out of the Bargaining Unit, he shall continue to accrue Vesting Service (but not Accrual Service) as long as he remains an employee of an Employer outside the Bargaining Unit. If such Employee terminates employment with such Employer while out of the Bargaining Unit, his eligibility for a benefit under Article III of the Plan shall be determined as follows:

(1) Eligibility for the Normal, Vested and Early Retirement Benefits shall be based upon whether the Employee satisfies the eligibility conditions for such a benefit at the time his employment terminates.

(2) Such an Employee shall not be eligible for the Disability Retirement, Incentive Retirement and Early Retirement Supplemental Benefits.

(3) Eligibility for the Surviving Spouse Automatic and Designated Co-Pensioner

Benefits shall be based upon whether the Employee satisfies the eligibility conditions for such benefits at the time he transferred out of the Bargaining Unit.

Further, the amount of benefits, if any, for which the Employee or his spouse or designated co-pensioner may be eligible shall be determined on the basis of such provisions of the Plan as are in effect at the time of the Employee's transfer out of the Bargaining Unit.

(b) Transfers into Bargaining Unit. If a person employed by an Employer outside of the Bargaining Unit is or has been transferred into the Bargaining Unit, he shall be given Vesting Service (but not Accrual Service) for his prior period of employment with an Employer on the same basis as would have applied if he had been an Employee.

ARTICLE III BENEFITS

3.01 Normal Retirement Benefit.

(a) An Employee whose employment with an Employer as herein defined shall have been or shall be terminated on or after June 1, 1979 and on or after his 65th birthday shall be eligible, as determined under the provisions of 10.01, for a Normal Retirement Benefit (subject to any reduction required by the provisions of (b) of 4.01).

(b) The monthly amount of the Normal Retirement Benefit payable in accordance with (a) of 4.01 for an Employee eligible therefor under (a) of this 3.01 shall be the product of $16.00 multiplied by his years of Accrual Service at the time of termination of employment.

3.02 Disability Retirement Benefit.

(a) An Employee whose employment with an Employer as herein defined shall have been or shall be terminated on or after June 1, 1979 and prior to his 65th birthday because of Total and Permanent Disability as defined in Article V hereof commencing after he has completed ten or more years of Accrual Service hereunder shall be eligible,

upon filing with the Joint Committee such proof of his Total and Permanent Disability as the Joint Committee may require and as determined under the provisions of such Article V, for a Disability Retirement Benefit (subject to any reduction required by the provisions of (b) of 4.01).

(b) The monthly amount of the Disability Retirement payable in accordance with (a) of 4.01 for an Employee eligible therefor under (a) of this 3.02 shall be $16.00 multiplied by his years of Accrual Service at the time of such termination of employment; provided that the amount of such monthly benefit payable prior to age 65 shall be reduced in any event by:

(1) any Workmen's Compensation payments (except fixed statutory payments for the loss of any bodily member), but only during the period of time for which such payments are applicable, and

(2) any disability benefits under any program or plan under a collective bargaining agreement

between the Union and his Employer or any fund created by legislative enactment to which his Employer contributes (except total and permanent disability benefits which may be provided under the Social Security Act as amended from time to time or under any equivalent State Law providing benefits of a similar nature to the Employee), but only during the period of time for which such disability benefits are applicable.

3.03 Vested Retirement Benefit.

(a) An Employee who is not eligible for a Disability Retirement Benefit and whose employment with an Employer as herein defined shall have been or shall be terminated on or after June 1, 1979 but prior to his 65th birthday and after he has completed ten or more years of Vesting Service hereunder, shall be eligible, as determined under the provisions of 10.01, for a Vested Retirement Benefit upon attainment of his 65th birthday (subject to any reduction required by the provisions of (b) of 4.01).

(b) The monthly amount of the Vested Retirement Benefit payable in accordance with (a) of 4.01 for an Employee eligible therefor under (a) of this 3.03 shall be the product of $16.00 multiplied by his years of Accrual Service at the time of termination of employment.

3.04 Early Retirement Benefit.

(a) An Employee who has completed ten or more years of Accrual Service hereunder and is not eligible for a Disability Retirement Benefit in accordance with the provisions of 3.02 and whose employment with an Employer as herein defined shall have been or shall be terminated on or after June 1, 1979, may elect, by written notice to the Joint Committee, to have his Vested Retirement Benefit paid instead as an Early Retirement Benefit on a reduced basis as provided in (b) of this 3.04 to commence on a date which is on or after his 55th birthday and prior to his 65th birthday, in which case he shall be eligible, as determined under the

provisions of 10.01, for such benefit upon survival to the date elected for commencement of his Early Retirement Benefit.

(b) The Early Retirement Benefit payable to an Employee eligible therefor in accordance with (a) of this 3.04 shall be a monthly benefit equal to the monthly amount of Vested Retirement Benefit to which he would otherwise be eligible after his 65th birthday, subject to the following reductions:

(1) For each monthly benefit payable prior to the date the Employee attains the age of sixty-five, the monthly benefit for which he would otherwise be eligible shall be reduced by 1/240 for each calendar month not in excess of 60 and by 1/400 for each such month in excess of 60, by which the date of commencement of his Early Retirement Benefit precedes the date such benefit would have commenced had he continued in the employment of the Employer until his 65th birthday and terminated employment on that day.

(2) For any Employee who terminates employment with the Employer after he attains the age of fifty-five, any monthly benefit for which he is eligible after he attains the age of sixty-five shall be equal to the monthly benefit for which he was eligible in the calendar month immediately prior to the calendar month in which he attained the age of sixty-five increased by an amount which is 100% of the reduction determined in (1) of this (b).

3.05 Incentive Retirement Benefit.

(a) An Employee who has filed written notice with the Joint Committee to have his Vested Retirement Benefit paid as an Early Retirement Benefit commencing on the first day of the calendar month immediately following termination of employment with the Employer, shall be eligible, as determined under the provisions of 10.01, for an Incentive Retirement Benefit in addition to any benefit for which he may be eligible in accordance with 3.03 and 3.04, provided such termination of employment occurs:

(1) before the Employee has attained his 65th birthday;

(2) before he is eligible for a Disability Retirement Benefit in accordance with 3.02;

(3) after' he has attained his 55th birthday;

(4) after he has completed at least ten years of Accrual Service;

(5) on or after June 1, 1977; and

(6) while he is employed by the Employer in the Bargaining Unit.

An Employee will not be eligible for an Incentive Retirement Benefit based on a termination of employment while he is employed by the Employer outside the Bargaining Unit or unless a benefit is payable under the Plan on the first day of the calendar month immediately following termination of employment with the Employer.

(b) The Incentive Retirement Benefit payable to an Employee eligible therefor in accordance with (a) of this 3.05 shall be a benefit of $105 per month.

3.06 Early Retirement Supplemental Benefit.

(a) An employee whose employment with an Employer as herein defined shall have been or shall be terminated on or after June 1, 1979 and who has completed at least twenty years of Accrual Service and is eligible for an Incentive Retirement Benefit as provided in 3.05 but has not reached his 62nd birthday and neither has become eligible nor would have upon proper application become eligible for a benefit under the Social Security Act based on his employment, shall be eligible, as determined under the provisions of 10.01, for an Early Retirement Supplemental Benefit in addition to any benefit for which he may be eligible in accordance with 3.03, 3.04 or 3.05.

(b) The monthly amount of the Early Retirement Supplemental Benefit payable to an Employee

eligible therefor in accordance with (a) of this 3.06 shall be the product of $12.00 multiplied by his years of Accrual Service to a maximum of 35 years.

3.07 Surviving Spouse Automatic Benefit.

(a) If an Employee dies on or after June 1, 1979 while employed by an Employer leaving a surviving spouse, such spouse shall be eligible, as determined under the provisions of 10.01, for a Surviving Spouse Automatic Benefit provided at the time of death, the Employee:

(1) has attained his 55th birthday and accrued at least ten years of Accrual Service, or

(2) has accrued at least 20 years of Accrual Service, or

(3) has attained his 65th birthday.

If an Employee, who terminates employment with the Employer after he has either attained his 55th birthday and accrued at least ten years of Accrual Service or attained his 65th birthday, dies after the date of such termination and on

or after June 1, 1979 but before payment of his benefit has begun; the surviving spouse, if any, of such an Employee shall be eligible, as determined under the provisions of 10.01, for a Surviving Spouse Automatic Benefit.

(b) The Surviving Spouse Automatic Benefit payable to the surviving spouse of a deceased Employee eligible for such benefit in accordance with (a) of this 3.07 shall be a monthly benefit payable for the life of such spouse computed and payable in the same manner as the reduced monthly benefit which would have been payable assuming the Employee had elected to have his Normal or Early Retirement Benefits begin immediately on a reduced basis under (b) of 4.01 and also assuming that the Employee had:

(1) become eligible for such reduced monthly benefit immediately prior to death, in case of an Employee who had attained his 55th birthday prior to death, or

(2) survived and become eligible for such reduced monthly benefit on the date on which he would have become age 55 and died immediately thereafter, in the case of an Employee who dies prior to age 55 (but in determining the reduced monthly benefit which would have been payable under this (2) Accrual Service at death prior to age 55 shall be used and the 100% decrease in the reduction described in (b)(5) and (c)(4) of 4.01 shall be disregarded).

3.08 Designated Co-Pensioner Benefit.

(a) If an Employee dies on or after June 1, 1977 leaving no surviving spouse but leaving a person designated as a co-pensioner in a written application filed with the Joint Committee, said designated co-pensioner shall be eligible, as determined under the provisions of 10.01, for a Designated Co-Pensioner Benefit provided at the time of death the Employee is employed by an Employer and:

(1) has attained his 55th birthday and accrued at least ten years of Accrual Service or,

(2) has accrued at least 20 years of Accrual Service.

(b) The Designated Co-Pensioner Benefit payable to the designated co-pensioner of a deceased Employee eligible for such benefit in accordance with subsection (a) of this 3.08 shall be a monthly benefit payable for the life of such co-pensioner computed and payable in the same manner as the reduced monthly benefit which would have been payable assuming the Employee had elected to have his Normal or Early Retirement Benefit begin immediately on a reduced basis under (c) of 4.01 and also assuming that the Employee had:

(1) become eligible for such reduced monthly benefit immediately prior to death, in case of an Employee who had attained his 55th birthday prior to death, or

(2) survived and become eligible for such reduced monthly benefit on the date on which he would

have become age 55 and died immediately thereafter, in the case of an Employee who dies prior to age 55 (but in determining the reduced monthly benefit which would have been payable under this (2) Accrual Service at death prior to age 55 shall be used and the 100% decrease in the reduction described in (b)(5) and (c)(4) of 4.01 shall be disregarded).

3.09 Pensioner Benefits.

(a) With respect to Pensioners, benefits shall be payable on and after June 1, 1979 in accordance with the Plan in effect on May 31, 1979 except as provided in (b) and (c) of this 3.09.

(b) In the case of a Pensioner to whom or to whose beneficiary the Plan paid a benefit in May of 1979 and who met the age and service eligibility requirements for a normal or early retirement benefit or a total and permanent disability benefit under the Plan provisions in effect at his termination of employment (but not including any Pensioner whose employment was terminated prior to the earliest age to

at which such Pensioner could become entitled to immediate payment of retirement benefits for reasons other than total and permanent disability under the provisions of the Plan in effect at such termination, or any Employee), monthly, normal or early retirement benefit payments or total and permanent disability benefit payments (including any monthly benefits for which a Pensioner becomes eligible after any determination that the Pensioner is no longer totally and permanently disabled or after he attains his 65th birthday) payable on or after June 1, 1979 to such Pensioner or his beneficiary will be equal to the monthly, normal or early retirement benefit or total and permanent disability benefit payable under the Plan in effect on May 31, 1979 to such Pensioner or beneficiary, increased by 10%.

(c) Incentive retirement benefits and early retirement supplemental benefits for which a Pensioner is eligible under the Plan in effect on May 31, 1979 shall be payable under the applicable provisions of the Plan in effect

on May 31, 1979 and will not be increased by (b) of this 3.09.

ARTICLE IV PAYMENT OF BENEFITS

4.01 Normal, Disability, Vested and Early Retirement Benefits.

(a) Life Only. Benefits for an Employee eligible for a Normal, Disability, Early or vested-Retirement Benefit shall be payable to such eligible Employee commencing as of the first day of the calendar month immediately following the date such Employee becomes eligible for such benefits under the Plan, provided the Employee be living on such first day, and shall be payable on the first day of each calendar month thereafter during the lifetime of such Employee, except as may be otherwise provided in this 4.01.

(b) Joint and 50% to the Surviving Spouse Benefit.

(1) If a Participant has a spouse on the date he becomes eligible for a Normal, Disability, Early or Vested Retirement Benefit and he has not filed a written election with the Employer before the end of the 30 day period beginning with such date to have benefit payments made only for the Employee's life in accordance with the life only form provided in (a) of this 4.01 or under the Copensioner Option provided in (c) of this 4.01, such benefit shall be reduced to a Joint and 50% to the Surviving Spouse Benefit for the Employee and such spouse.

(2) The Employee's reduced benefit shall be payable monthly while such Employee and spouse are living, commencing as of the first day of the calendar month immediately following the date he becomes eligible for a benefit under Article III, and after the Employee's death 50% of such reduced benefit shall be payable to such spouse, if then living, as a monthly benefit for as long as said spouse shall live.

(3) If the dates of birth of the Employee and his spouse occur in the same calendar year, the reduced benefit payable to the Employee shall be:

(A) 90% of the benefit otherwise payable, for any Employee eligible for a Normal, Early or Vested Retirement Benefit or a Disability Retirement Benefit commencing on or after the Employee's 55th birthday, and the 90% factor will be increased (or decreased) by 1/2 of 1% for each year (rounded to the nearest full year) in excess of five full years that the date of birth of the spouse precedes (or follows) the Employee's date of birth, or

(B) for any Employee eligible for a Disability Retirement Benefit commencing -

(i) before his 55th birthday and on or after his 50th birthday, 85% of the benefit otherwise payable,

(ii) before his 50th birthday and on or after his 45th birthday, 80% of the benefit otherwise payable, or

(iii) before his 45th birthday, 75% of the benefit otherwise payable;

and the 85%, 80% and 75% factors will be increased (or decreased) by 1/2 of 1% for each year (rounded to the nearest full year) that the date of birth of the spouse precedes (or follows) the Employee's date of birth.

(4) In no event shall any increase provided in (3) of this (b) result in a benefit payable to the Employee which exceeds 95% of the benefit otherwise payable. Satisfactory proof of age of such spouse will be required prior to payment under this (b).

(5) Any benefit payable under this (b) for a month after the date the Employee is (or would have been had he survived) age sixty-five to the surviving spouse of an Employee who terminates employment after such

Employee attains the age of fifty-five, shall be based on the Employee's benefit determined under (b)(2) of 3.04.

(6) If a reduced benefit becomes payable to an Employee under this (b), the amount of any benefit payable to such Employee following death of his spouse shall be determined under Article III based on Accrual Service at termination of employment and payable in accordance with (a) of this 4.01.

(c) Co-Pensioner Option.

(1) An Employee who is eligible for a Normal, Disability, Early or Vested Retirement Benefit may elect a Co-pensioner Option by so notifying the Joint Committee in writing designating any person as a co-pensioner. In this event, the Employee will receive a reduced benefit payable monthly while such Employee and co-pensioner are living, commencing as of the first day of the calendar month immediately following the date he becomes eligible for a benefit under Article III, and after the

Employee's death 50% of such reduced benefit shall be payable to such co-pensioner, if then living, as a monthly benefit for as long as said co-pensioner shall live.

(2) If the dates of birth of the Employee and the co-pensioner occur within a period of six months, the reduced benefit payable to the Employee shall be:

(A) 83% of the benefit otherwise payable, for any Employee eligible for a Normal, Early or Vested Retirement Benefit or a Disability Retirement Benefit commencing at or after the Employee's 55th birthday, and

(B) for any Employee eligible for a Disability Retirement commencing -

(i) before his 55th birthday and on or after his 50th birthday, 78% of the benefit otherwise payable,

(ii) before his 50th birthday and on or after his 45th birthday, 73% of the benefit otherwise payable, or

(iii) before his 45th birthday, 68% of the benefit otherwise payable;

except that the 83%, 78% 73% and 68% factors shall be increased (or decreased) by 1/2 of 1% for each year (rounded to the nearest full year) that the date of birth of the co-pensioner precedes (or follows) the Employee's date of birth.

(3) In no event shall any increase provided in (2) of this (c) result in a benefit payable to the Employee which exceeds 95% of the benefit otherwise payable. Satisfactory proof of age of the co-pensioner will be required prior to payment under this (c).

(4) Any benefit payable under this (c) for a month after the date the Employee is (or would have been had he survived) age sixty-five to the co-pensioner

of an Employee who terminates employment after such Employee attains the age of fifty-five, shall be based on the Employee's benefit determined under (b)(2) of 3.04.

(5) If a reduced benefit becomes payable to an Employee under this (c), the amount of any benefit payable to such Employee following death of his co-pensioner shall be determined under Article III based on his Accrual Service at termination of employment and payable in accordance with (a) of this 4.01.

(d) Notice and Explanation of Optional Benefits.

At least nine months before the Employee's 55th birthday, the Joint Committee shall provide each Employee with a written notice of the availability of:

(1) an election to receive benefits under the Plan in a form other than a Joint and 50% to the Surviving Spouse Benefit described in (b) of this 4.01, and

(2) a written explanation in non-technical language of the terms and conditions of such Joint and 50% to the Surviving Spouse Benefit and of the financial effect upon the Employee's benefit (in terms of dollars per annuity payment) of making an election under (b) of this 4.01.

Within 30 days after an Employee's written request to the Joint Committee for information on the options available, the Joint Committee shall furnish the Employee with such written explanation of the Joint and 50% to the Surviving Spouse Benefit and of the effect of an election to have benefits payable only for the Employee's lifetime under (a) of this 4.01. The Employee may cancel or reinstate any such election by filing written notice with the Joint Committee at any time prior to the end of a period of 30 days immediately following the date he becomes eligible for a retirement benefit under the Plan, but not there after.

(e) Termination of Disability Retirement Benefit. A Disability Retirement Benefit payable to an Employee under (a), (b) or (c) of this 4.01 shall be terminated on the date of the earliest to happen of the following:

(1) engaging by the Employee in any regular gainful occupation or employment for remuneration or profit (except for purposes of rehabilitation as may have been previously approved by the Joint Committee),

(2) refusal by the Employee to undergo a medical examination ordered by the Joint Committee, provided that the Employee shall not be required to undergo a medical examination more often than twice a year after Total and Permanent Disability has existed for more than one year, or

(3) determination by the Joint Committee that the Employee is no longer Totally and Permanently Disabled.

4.02 Incentive Retirement Benefit. The Incentive Retirement Benefit shall be payable to an Employee eligible therefor under 3.05, commencing as of the first day of the calendar month immediately following the date such Employee becomes eligible for such benefit, provided the Employee is living on such first day, and shall be payable on the first day of each month thereafter during the lifetime of such Employee; provided, however, that no Incentive Retirement Benefit shall be payable after the Employee's 65th birthday.

4.03 Early Retirement Supplemental Benefit. The Early Retirement Supplemental Benefit shall be payable to an Employee eligible therefor under 3.06 commencing as of the first day of the calendar month immediately following the date such Employee becomes eligible for such benefit, pro-

vided the Employee is living on such first day, and shall be payable on the first day of each month thereafter during the lifetime of such Employee; provided, however, that no Early Retirement Supplemental Benefit shall be payable after the earlier of the Employee's 62nd birthday and the date the Employee becomes eligible or would upon proper application become eligible for a benefit under the Social Security Act based on his employment.

4.04 Offset Against Retirement Benefits Under Another Plan. The rights of Employees under this Plan have been established in lieu of any rights which any such Employees or their beneficiaries may have or may have had under any other pension or retirement plan of any Employer adopted prior to and in effect as of the effective date of this Plan, except as specifically otherwise provided by such other plan as amended to the date of execution of this Plan. To the extent that said specific provisions of such other plan require reduction of benefits payable under it on account of benefits

payable with respect to Employees under this Plan, benefits paid to Employees under this Plan shall operate to reduce (and shall be paid under this Plan only to the extent that they have the effect of reducing) said retirement benefits under such other plan in accordance with said specific provisions of such other plan.

ARTICLE V TOTAL AND PERMANENT DISABILITY DETERMINATION

Total and Permanent Disability under the Plan means a physical or mental condition which totally disables and which is expected to and presumably will continuously and permanently and totally disable the Employee so that he is permanently prevented from engaging in any regular employment with any employer or any other gainful occupation for which he is or may be suited by education, training, or experience, except such employment as is found by the Joint Committee to be for the purpose of rehabilitation or to be compatible with the finding of Total and Permanent Disability.

Such Employee shall be required to furnish such proof of Total and Permanent Disability as the Joint Committee

may determine; provided, however, that the Joint Committee may require a medical examination by a physician or clinic chosen by the Joint Committee at the expense of the Plan.

Notwithstanding the above, no Disability Retirement Benefits shall be payable due to a disability which:

(a) results from the Employee's addiction to narcotics or drugs,

(b) was contracted, suffered, or incurred while the Employee was engaged in or resulted from his having engaged in the commission of a felony of which he was convicted,

(c) resulted from an intentionally self-inflicted injury, or

(d) resulted from service in the armed forces of the United States or Canada for which a service connected government disability pension is payable, or from service in the armed forces of any other country.

Notwithstanding an initial finding of Total and Permanent Disability, the Joint Committee may require an Employee who is prior to age 65 to furnish proof of continuance of such disability at any reasonable time or to submit to medical examination by the Joint Committee, but

not in excess of twice per year after Total and Permanent Disability has existed for more than one year.

ARTICLE VI CONTRIBUTIONS BY EMPLOYERS

Each Employer shall contribute to the Fund such amounts as it may from time to time be obligated to contribute in accordance with a then current collective bargaining agreement between the Union and such Employer, but in no event less than the minimum contribution required under the Act. The foregoing agreement to contribute is an individual, several liability, and not a joint liability, of the respective Employers.

The contribution to be made by each Employer hereunder covering all payroll periods for which wages have been paid by such Employer within a given calendar month shall be made by the Employer no later than ten business days, next following the last day in such month upon which the Employer has paid wages to its Employees.

On the basis of actuarial cost studies, the Employers and the Union believe, but do not undertake or agree, that the Fund created by Employer contributions will provide the benefits set forth in this Plan on a sound actuarial basis, and will meet the full current cost of the Plan and will amortize the original past service cost of the Plan and each later

increment of past service cost due to plan changes, on a level funding basis over a period of not in excess of thirty years from the date each item of past service cost was incurred.

ARTICLE VII DISCONTINUANCE OF THE PLAN BY AN EMPLOYER

If an Employer ceases to be an Employer as defined herein, its then Employees shall be treated as having had their services with such Employer terminated for the purpose of determining the period during which they retain the right to reinstatement of Vesting Service and Accrual Service under 2.06; provided, however, that:

(a) within 60 days after such cessation the Joint Committee will notify the Pension Benefit Guaranty Corporation thereof and request determination by such Corporation of the Employer's liability under the Act, unless, such cessation does not constitute a withdrawal from the Plan under Section 4063 of the Act and the funding provisions of Article VI continue to be met; and

(b) at any time within three years after such date the Joint Committee may, if it deems it necessary to protect the interests of the Employees and Pensioners and their spouses and, in the event a failure to meet the funding requirements of Article VI has occurred, after notifying the Pension Benefit

Guaranty Corporation and complying with all other applicable provisions of Section 4041 of the Act, elect to determine and make provision for payment of the interests of the Employees of the discontinued Employer as if there has been a complete termination of the Plan as to all Employees in accordance with Article VIII as of the date the Employer ceased to be an Employer (such action on the part of the Joint Committee shall not in itself terminate the Plan with respect to the Employees of the then remaining Employers).

ARTICLE VIII TERMINATION OF THE PLAN

8.01 Termination by Joint Committee. The Plan shall be terminated by the Joint Committee if and when all Employers cease to be Employers as defined herein.

8.02 Notice to Pension Benefit Guaranty Corporation. In the event of such termination, the Joint Committee shall notify the Pension Benefit Guaranty Corporation as provided by the Act.

8.03 Allocation of Fund.

(a) Upon receipt of notice from such Corporation authorizing termination of the Plan, the assets then remaining in the Fund after providing for the expenses of the Plan and the Fund shall be allocated to the extent they shall be sufficient for the purpose of paying the benefits of the Plan

in accordance with Section 4044 of the Act, which provides substantially the following order of precedence:

(1) First, in the case of benefits which were in pay status as of the beginning of the 3-year period ending on said termination date (based on the lowest benefit level in pay status during the 3-year period) or which would have been on pay status at the beginning of said 3-year period if the Employee had retired from the service of the Employer prior thereto and elected to have his retirement benefit begin at the earliest possible date.

(2) Second, in the case of all other benefits of the Plan which are guaranteed under Title IV of the Act or which would be so guaranteed if Sections 4022(b)(5) and (6) of the Act did not apply.

(3) Third, in the case of all other benefits which are vested or would be vested if termination of service had occurred at said termination date.

(b) Benefits described in (a)(1) and (3) of this 8.03 shall be based on Plan provisions (as in effect during the 5-year period ending on said termination date) under which such benefits would be the least, if the assets available for allocation are inadequate to provide the benefits described in (a) of this 8.03 in full.

(c) If the assets are more than adequate to provide the benefits as described in (b) of this 8.03, then the benefits described in (a)(1) and (3) of this 8.03 shall be based on the most recent Plan amendment which assures that the benefits described in (a) of this 8.03 can be provided in full by the available assets, and any assets remaining after such application shall be allocated to provide any increase in benefits effected by the next succeeding Plan amendment, following the priorities established in (a) of this 8.03.

(d) Any assets available for allocation in excess of those necessary to provide in full the benefits described in (a) of this 8.03 based on the Plan provisions in effect at said termination date shall be applied to provide a monthly retirement benefit beginning at age 65 to each Employee not covered under (a) of this 8.03, based on Accrual Service.

(e) Any assets remaining after the allocation under (d) of this 8.03 shall be refunded to the Employer.

(f) If the allocable assets available to provide benefits described in (a) (1), (2) or (3) or (d) of this 8.03 are insufficient to provide for such benefits in full, the amounts of said benefits shall be reduced on a pro-rata basis to the extent necessary.

(g) The allocations provided for above shall be applied to provide said benefits in such manner as shall be agreed upon by the Employer and the Pension Benefit Guaranty Corporation or by payment of the segregated fund to a court-appointed trustee under the Act.

ARTICLE IX AMENDMENT OF THE PLAN

The Plan may be modified, altered, or amended upon mutual agreement of the Union and the Employers; provided, however, that, whether upon termination of the Plan or otherwise, no part of the corpus or income of the Fund can be used for, or diverted to, purposes other than for the exclusive use of the Employees and Pensioners and their spouses and co-pensioners, and no such amendment shall be effective which is inconsistent with the provisions of the Act.

ARTICLE X ADMINISTRATION PROVISIONS

10.01 Determination of Benefits. No Employee, spouse or co-pensioner shall be eligible for a benefit hereunder until his right thereto and the form thereof shall have been finally determined by the Joint Committee consistent with the Plan nor until he shall have submitted to the Joint Committee, in such form as the Joint Committee may require, all information requested, and then benefits shall be payable only to the extent that there are amounts available in

the Fund to pay such benefits. If the Joint Committee determines that the Employee, spouse or co-pensioner is not eligible for such benefits, a written denial setting forth the specific reasons for failure to meet the conditions of eligibility and specifying the procedure by which the claimant can obtain a review of the claim, shall be provided by the Joint Committee to the Employee, spouse or co-pensioner.

10.02 Payments to Incompetents. If the Joint Committee shall find that an Employee, spouse or co-pensioner to whom a benefit is payable is physically, mentally, or legally unable to receive or acknowledge receipt thereof, any payment due, in the absence of claim filed by a duly appointed guardian, committee or other legal representative, may be paid to the spouse, a child, a parent, a brother, a sister, or other relative of the Employee, spouse of co-pensioner or another person for the benefit of the Employee, spouse or co-pensioner, as the Joint Committee determines. Any such payment shall be a complete discharge of any liability of the Plan and the Fund therefor.

10.03 Record of Retired Employees. It shall be the duty of each Employee entitled to benefits hereunder to keep the Joint Committee informed with regard to his residence address. If the Joint Committee has no record of the

Employee's residence for a continuous period of one year, it may be conclusively presumed that the Employee is deceased; provided, however, that if he shall later notify the Joint Committee regarding his address while the Plan is still in effect, benefits for which he is eligible under the Plan shall be provided to him.

10.04 Non-Alienation of Benefits. No benefit payable at any time under the Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment or encumbrance of any kind. Any attempt to alienate, sell, transfer, assign, pledge or otherwise encumber any such benefit, whether presently or hereafter payable, shall be void. If any person entitled to a benefit under the Plan shall attempt to or shall alienate, sell, transfer, assign, pledge, or otherwise encumber his benefit or any part thereof, or if, by reason of his bankruptcy or other event happening at any time, such benefit or part thereof would devolve upon anyone else or would not be enjoyed by him, then the Joint Committee in its discretion may terminate his interest in any such benefit and apply it to or for the benefit of such person, his spouse, children, or other dependents, or any of them, in such manner as the Joint Committee may deem proper. Provided, however, that in the event the Union, the Employers or any

combination of them arranges group hospital or surgical care benefits or insurance for Employees receiving benefits hereunder any Employee then currently receiving benefits hereunder may, by his revocable written authorization acceptable to the Joint Committee, have deducted from his benefit payments hereunder the amount of the subscription rates or premiums for such group hospital or surgical care benefits or insurance coverage which do not exceed 10% of any such benefit payment.

ARTICLE XI FUND

Contributions made by the Employers in accordance with Article VI hereof shall be deposited in a Fund which shall be held by a Trustee. No Employee shall be required to make any contribution to the Fund. Such Fund shall be used to pay the benefits, the fees of the Trustee, and other expenses specifically chargeable to the Fund by the terms of the Plan. The benefits shall be limited to such amounts as can be provided by the Fund; such benefits and any fees and expenses shall be payable only from the Fund and only at the direction of the Joint Committee. Except as provided in the Act, neither the members of the Joint Committee, the Union, the members of the Union, the Trustee, the Employers nor any of them shall:

(a) be liable for the payment of such benefits, fees or expenses,

(b) in any way guarantee the Fund or the Employees or Pensioners or spouses or co-pensioners of either, against loss of or depreciation in any of the assets of the Fund or guarantee the payment of any benefits under the Plan, or

(c) have any liability for a Plan responsibility allocated to another hereunder.

The Joint Committee shall select and contract with the Trustee and shall have the full right to remove such Trustee and to select its successor or successors and to determine the form and terms, consistent with the terms of this Plan, of any trust agreement with the Trustee. Any trust agreement with the Trustee shall designate the fiduciary or fiduciaries with powers, duties, rights and discretions in investing, retaining, selling and managing the assets constituting the Fund as required by the Act.

Any Trustee designated hereunder shall be a bank or trust company incorporated under the laws of the United States or any State and qualified to act thereunder as a Trustee.

ARTICLE XII ADMINISTRATION OF THE PLAN

12.01 Joint Committee - Composition. The Plan shall be administered by the Joint Committee, four members of which (hereinafter referred to as the Union members) shall be appointed by the Union, and four members of which (hereinafter referred to as the Employer members) shall be appointed by certain of the Employers as hereinafter set forth.

12.02 Employer Members - Appointment. Each Employer shall, in writing, appoint one person of its choice to serve as an Employer member of the Joint Committee. Each Employer shall give prompt written notice by registered mail to each other Employer and the Union of the name and address of the member of the Joint Committee whom it has appointed. The fourth Employer member of the Joint Committee shall be appointed by the written concurrence of all Employers and such members shall act as Secretary to the Joint Committee.

No persons shall serve or be appointed to serve as a member of the Joint Committee in contradiction of the terms of Section 411 of the Employee Retirement Income Security Act of 1974, as amended. No person shall be disqualified from being a member of the Joint Committee hereunder by reason of the fact that he is or hereafter becomes an Employee or Pensioner.

12.03 Employer Members - Removal. Each Employer member of the Joint Committee may be removed as such member by the Employer or Employers which shall have appointed him. In case of such removal or in the event of the death of any such Employer member, the appointing Employer or Employers shall, within five days following such removal or death, have the right to appoint a new Employer member, subject to the same notice requirements, waiver privileges and rights as are set forth in 12.02 in respect to the appointment of initial Employer members of said Committee.

12.04 Union Members - Appointment and Removal. The Union shall give prompt written notice by registered mail addressed to each Employer of the name and address of each Union member of the Joint Committee which it may appoint. The Union may at any time remove any Union member of said Committee and may appoint a new member to fill any vacancy resulting from such removal or caused by the death of any such member. The Union shall give prompt written notice by registered mail to each Employer of the name and address of each new Union member of the said Committee which it may appoint.

12.05 Effective Date of Member Appointments. No appointment of Union members or Employer members shall

be effective unless and until notices of such appointment shall be mailed as provided, respectively, in 12.02, 12.03 and 12.04.

12.06 Joint Committee Members - Compensation. Employer and Union members of the Joint Committee shall serve without compensation from the Fund.

12.07 Joint Committee - Quorum and Voting. To constitute a quorum for the transaction of business, there shall be required to be present at any meeting of the Joint Committee at least three Union members and at least three Employer members. The Employer members so present shall be entitled to cast a total of four votes and the Union members so present shall be entitled to cast a total of four votes. Decisions of the Joint Committee shall be by a majority of the votes cast; provided, however, that any such meeting of the Joint Committee and with respect to any and all actions, decisions or agreements of the Joint Committee all four votes of the Employer members shall be cast en bloc as determined by a majority of the Employer members present.

12.08 Joint Committee - Responsibilities and Powers.

(a) The Joint Committee shall have full and

complete authority and control over the Plan and in connection with their operation and administration of the Plan, unless the following responsibilities are allocated or delegated in accordance with the procedures set forth in (b)(11) and (b)(12) of this 12.08, the Joint Committee shall:

(1) Establish and maintain a funding policy and method consistent with the Plan's objectives and in accordance with any law applicable to the Plan.

(2) Prepare, execute, file and retain a copy for the Plan records of all reports required by law or deemed by them to be necessary or appropriate for the proper administration and operation of the Plan.

(3) Procure an audit of the books of the Plan by a certified public accountant not less frequently than once each year.

(4) Procure and maintain at the expense of the Plan such bonds as required by law, together with such additional bonding coverages they may determine for the members of the Joint Committee, employees of the Plans, any agents acting on behalf of or retained by the Joint Committee and persons to whom fiduciary responsibilities have been delegated.

(b) The Joint Committee shall have such powers as are necessary for the proper administration of the Plan, including the following:

(1) To prescribe procedures to be followed by Employees, Pensioners, spouses and co-pensioners in filing applications for benefits, and for the furnishing of evidence (including without limitation proofs of birth, death, marriage, disability and employment) necessary to establish rights to such benefits.

(2) To make determinations of the rights of any Employee, Pensioner, spouse or co-pensioner applying for or receiving benefits, and to afford any such individual dissatisfied with any such determination the right to a hearing thereon before the Joint Committee.

(3) To develop procedures for the establishment of service of Employees and, after affording Employees an opportunity to make objection with respect thereto, to establish such service conclusively in advance of retirement.

(4) To obtain from the Employers, from the Union, from the Employees, Pensioners, spouses and co-pensioners, or from such other parties as are involved in the Plan, such information as shall be necessary (A) for

proper administration of the Plan, (B) for securing and maintaining approval under Section 401(a) of the Internal Revenue Code of 1954, as amended, and (C) for making filings from time to time with the Labor Department, the Internal Revenue Service and the Pension Benefit Guaranty Corporation as required by the Act.

(5) To authorize all disbursements from the Fund in accordance with this Agreement, and to establish necessary procedures therefor.

(6) To prepare and distribute in such manner as the Joint Committee determines to be necessary or appropriate any information explaining the Plan.

(7) To furnish to any Employer and to the Union, upon request, such reports with respect to the administration of the Plan as are reasonable and appropriate.

(8) To make such arrangements as may be necessary for proper administration of the Plan, which may involve arrangement of office space, equipment, or services.

(9) To retain at the expense of the Fund such legal, actuarial, or accounting counsel as it may deem necessary or advisable.

(10) To determine from time to-time who shall be eligible for benefits under the Plan; the nature, type, character and amount of benefits to be provided and the medium by which such benefits shall be provided. In determining who shall be eligible for benefits under the Plan, the Joint Committee may establish standards for granting or denying such eligibility to Employees.

(11) To designate in writing persons who are not members of the Joint Committee to carry out fiduciary or nonfiduciary responsibilities or duties of the Joint Committee, and in the event of such a designation, the members of the Joint Committee shall not be liable for any act or omission of such a person.

(12) To allocate, in writing, fiduciary or nonfiduciary responsibilities or duties among the members of the Joint Committee provided the member to whom such responsibility has been allocated consents thereto. Those persons to whom such responsibilities have not been allocated shall not be liable for any act or omission of those persons to whom such responsibilities have been allocated.

(13) To construe and interpret this Plan and any agreement with a Trustee.

(14) To the extent such is consistent with the provisions of Section 41O(b) of the Employee Retirement Income Security Act of 1974, to purchase out of the assets of the Plan, insurance for the benefit of the Plan and/or the protection of the members of the Joint Committee, Plan employees or other fiduciaries of the Plan against any losses by reason of errors or omissions or breach of fiduciary duty.

(15) To pay membership dues in educational and other organizations operated for purposes related to the Plan.

(16) To appoint one or more investment managers to supervise and direct the investment and reinvestment of a portion or all of the Fund. Any investment manager appointed shall be an investment advisor registered under the Investment Advisers Act of 1940, a bank as defined in such Act or an insurance company which is qualified to manage the assets of employee benefit plans under the laws of more than one state. As a condition to its appointment, an investment manager shall acknowledge in writing that it is a fiduciary with respect to the Plan. The Joint Committee may furnish an investment manager with written investment guidelines which guidelines may include

directions with respect to diversification of the investments. Any investment manager shall receive such reasonable compensation chargeable against the Fund as shall be agreed upon with the Joint Committee.

12.09 Reliance and Liability. The Joint Committee and any member thereof shall be entitled to rely upon the correctness of any information furnished by the Employers, the Employees and Pensioners and their spouses and co-pensioners, or the Union. Neither the Joint Committee nor its members, nor the Trustee, nor the Union, nor any officer or any other representative of any Employer, shall be liable to any person whatsoever, because of any act or failure to act on the part of the Joint Committee, or any of its members, except that nothing herein shall be deemed to relieve any individual member of the Joint Committee from liability for his own fraud or bad faith or from its liability under the Act.

12.10 Arbitration. In the event the Employer members and the Union members fail to agree upon a matter which is properly before the Joint Committee and within its authority to determine, a deadlock shall be deemed to exist and the Joint Committee may then select a neutral person as an impartial arbitrator who is willing to act in the resolution of such deadlock. In the event the Employer members and

the Union members are unable to agree upon the selection of an impartial arbitrator within 30 days after such deadlock and if the matter over which the deadlock has occurred is subject to the impartial umpire requirements of section 302(c)(5)(B) of the Taft-Hartley Act, then any one or more of the members of the Joint Committee may request the Federal Mediation and Conciliation Service to supply a list of seven names of qualified arbitrators. The Employer members of the Joint Committee and the Union members of the Joint Committee shall take turns striking a name from the list until there is one name remaining, and this individual shall be the impartial arbitrator. Any expenses, costs and attorneys' fees in connection with the foregoing shall be paid by the Plan, including any reasonable compensation to the arbitrator. The impartial arbitrator shall have no power to alter, delete, amend, add to, take away from or disregard any of the provisions of this Agreement or this Plan and shall have no power to cause the Joint Committee to alter, delete, amend, add to, take away from or disregard any provision of this Agreement or this Plan. The decision of the impartial arbitrator shall be final and binding upon the Joint Committee, all parties hereto, Pensioners, the Employees and their beneficiaries. The Joint Committee shall take or omit

taking any action or actions that may be indicated in order to give effect to the decision of the impartial arbitrator.

It is specifically understood and agreed by the parties hereto that neither this Agreement nor this Plan nor any question or dispute relative to the provisions of this Agreement or this Plan shall be subject to the grievance or arbitration procedures established in any collective bargaining agreement between an Employer and the Union.

12.11 Joint Committee - Limitations on Powers. The Joint Committee shall have no power, authority or discretion relative to the investment, reinvestment, exchange, retention, sale or management of the assets constituting the Fund. Nor shall the Joint Committee have power to add to or subtract from or modify any of the terms of this Agreement or this Plan, nor to waive or fail to apply any requirement of eligibility for a benefit under this Agreement or Plan. Any case referred to the Joint Committee on which it has no power to rule shall be referred back to the parties without ruling.

12.12 Joint Committee - No Precedents. No ruling or decision of the Joint Committee in one case shall create a basis for a retroactive adjustment in any other case prior to the date of written filing of each such specific claim.

ARTICLE XIII RETIREMENT AGE

No employee shall be retired for age reasons alone without his consent before his 70th birthday.

An Employee's retirement may be deferred beyond such date only upon approval by the Employee's Employer and approval by the Union of the Employee's written request for such deferment, without regard to seniority.

Any Employee on the seniority list on March 1, 1953 and who shall have been or shall be retired, at or after his 65th birthday and after June 1, 1977, with eight or more but with less than fifteen years of Accrual Service shall instead be credited with an aggregate of fifteen years of Accrual Service and his benefit shall be computed accordingly.

ARTICLE XIV GENERAL

14.01 Internal Revenue Code Qualification and Compliance With Act. The parties hereto intend that this Plan and any trust agreement entered into pursuant hereto shall conform to the provisions of the Act and qualify under Section 401(a) of the Internal Revenue Code, as amended, and that all contributions made under the provisions of this Plan shall be deductible for income tax purposes. It is the understanding of the parties that this Plan is presently in conformity with the requirements of the Act and of Sections

401(a), 404(a) and all other applicable provisions of the Internal Revenue Code. The parties hereto agree that should this Plan at any time be found not to so conform or not to so qualify any contributions hereunder as deductible for income tax purposes, they will meet promptly upon the request of any party hereto and will negotiate as speedily as possible such amendments or modifications of the Plan as may be necessary to conform to the Act and to qualify or maintain the Plan as a plan meeting the requirements of Sections 401(a) and 404(a) of the Internal Revenue Code, as now in effect, or hereafter amended, or any other applicable provisions of the Federal tax laws as now in effect or hereafter amended or adopted and any regulations issued thereunder. Such amendments or modifications may be made retroactive, if necessary or appropriate, to accomplish the above-described purposes.

14.02 Gender. Words of the masculine shall include the feminine gender where applicable.

14.03 Titles to Sections. The sections of this Agreement have been identified by title for the purpose of ready reference only and such titles shall not be deemed to affect the meaning or construction of any of the provisions hereof.

14.04 Merger, Consolidation or Transfer of Assets and Liabilities to Other Plans. To the extent law applicable to the Plan requires at the time of merger, consolidation or transfer, there shall be no merger or consolidation of the Plan nor a transfer of the Plan's assets or liabilities to another plan unless each Employee were entitled to receive a pension benefit immediately after such event (if such other plan then terminated) which is equal to or greater than the pension benefit he would have been entitled to receive if this Plan had terminated immediately prior to such event.

14.05 Service in More Than One Fiduciary Capacity. Any individual, entity or group of persons may serve in more than one fiduciary capacity with respect to the Plan, the Fund or both to the extent such is permitted by law.

14.06 Payments To and From the Plan. Payments from the Plan shall be made without limitation by reason of enumeration for the following purposes:

(a) To provide for:

(1) the payment of all reasonable and necessary expenses of establishing the Plan, collecting the contributions and operating, administering, controlling or

managing the Plan; including payment of membership dues in educational and other organizations operated for purposes related to this Plan;

(2) the employment of such administrative, legal, expert and clerical assistance as may be reasonably necessary;

(3) the purchase or leasing of such premises as may be necessary for the operation of the affairs of the Plan; and

(4) the purchase or leasing of such materials, supplies and equipment as the members of the Joint Committee, in their discretion, find necessary or appropriate to the performance of their duties.

(b) To pay or provide for pension benefits to Employees and their spouses and designated co-pensioners in accordance with the terms, provisions and conditions of the Plan.

14.07 Savings Clause. In case any provision of this Plan shall be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this Plan, but this Plan shall be construed and enforced as if it had never contained such illegal or invalid provisions.

JOS. SCHLITZ BREWING CO.
MILWAUKEE, WISCONSIN 53201

August 14, 1981

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Ms. Ethel M Gormley
Secretary-Joint Committee
Milwaukee Brewery Workers
Pension Plan
2189 North 48th Street
Milwaukee, Wisconsin 53208

Schlitz Exhibit 45
Plan Exhibit 79

Mr. Robert Gustafson
Pabst Brewing Company
917 West Juneau Avenue
Milwaukee, Wisconsin 53201

Mr. John Van Vleet
Miller Brewing Company
3939 West Highland Boulevard
Milwaukee, Wisconsin 53208

Mr. Kenneth Mueller
Brewery Workers Union
2089 North 48th Street
Milwaukee, Wisconsin 53208

Subject: Brewery Workers Pension Plan

Gentlemen and Madam:

This is to advise you that the undersigned hereby resigns as a member of the Joint Committee of the above-referenced pension plan as of this date.

Sincerely,

s/s Charles J. Mazza
Director of Compensation and Benefits

CJM:lab
CC: H.L. Tessler
O.E. Firstenberger

Joint Pension Committee
Milwaukee Brewery Workers Pension Plan

2189 North 48th Street
Milwaukee, Wisconsin 53208

September 29, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
and
HAND DELIVERED

Mr. H. L. Fessler
Vice President, Labor Relations
Jos. Schlitz Brewing Company
235 West Galena Street
Milwaukee, Wisconsin 53201

SCHLITZ EXHIBIT 77
Plan Exhibit 133

Dear Mr. Fessler:

In accordance with the provisions of Section 4219(b) (1) of the Employee Retirement Income Security Act of 1974, as amended, the Joint Committee of the Milwaukee Brewery Workers' Pension Plan has determined that the amount of liability of Jos. Schlitz Brewing Company as a result of its complete withdrawal from the Milwaukee Brewery Workers' Pension Plan is $41,031,406. We have attached to this letter a schedule of payments for the withdrawal liability, which payments include both the amortization of the principal amount, plus interest. This schedule is incorporated in and made a part of this letter as fully as if written out herein.

Demand is hereby made upon you pursuant to the provisions of the Employee Retirement Income Security Act of 1974, as amended, for payment of the stated employer withdrawal

liability, $41,031,406, plus interest, in quarterly installments in accordance with the attached payment schedule commencing on or before November 1, 1981.

Very truly yours,

MILWAUKEE BREWERY WORKERS' PENSION PLAN

BY s/s Kenneth Mueller
Chairman

cc: Mr. Kenneth Mueller
Mr. J. R. Andres
Mr. T. A. Fulrath

AND s/s_____

Joint Pension Committee
Milwaukee Brewery Workers Pension Plan

2189 North 48th Street
Milwaukee, Wisconsin 53208

September 29, 1981

RE: Jos. Schlitz Brewing Company - Employer Withdrawal Liability Determination of Liability and Payment Schedule

In accordance with the provisions of Section 4219(b)(1) of the Employee Retirement Income Security Act of 1974, the Joint Committee of the Milwaukee Brewery Workers' Pension Plan has determined that the amount of liability of Jos. Schlitz Brewing Company as a result of its complete withdrawal from the Milwaukee Brewery Workers' Pension Plan is $41,031,406; and that the payment schedule for the payment of the amount of liability, plus interest, is as follows:

Payment Date	Amount of Payment
November 1, 1981	$986,370
February 1, 1982	986,370
May 1, 1982	986,370
August 1, 1982	986,370

November 1, 1982	986,370
February 1, 1983	986,370
May 1, 1983	986,370
August 1, 1983	986,370
November 1, 1983	986,370
February 1, 1984	986,370
May 1, 1984	986,370
August 1, 1984	986,370
November 1, 1984	986,370
February 1, 1985	986,370
May 1, 1985	986,370
August 1, 1985	986,370
November 1, 1985	986,370
February 1, 1984	986,370
May 1, 1984	986,370
February 1, 1986	986,370
May 1, 1986	986,370
August 1, 1986	986,370
November 1, 1986	986,370
February 1, 1987	986,370
May 1, 1987	986,370
August 1, 1987	986,370
November 1, 1987	986,370

February 1, 1988	986,370
May 1, 1988	986,370
August 1, 1988	986,370
November 1, 1988	986,370
February 1, 1989	986,370
May 1, 1989	986,370
August 1, 1989	986,370
November 1, 1989	986,370
February 1, 1990	986,370
May 1, 1990	986,370
August 1, 1990	986,370
November 1, 1990	986,370
February 1, 1991	986,370
May 1, 1991	986,370
August 1, 1991	986,370
November 1, 1991	986,370
February 1, 1992	986,370
May 1, 1992	986,370
August 1, 1992	986,370
November 1, 1992	986,370
February 1, 1993	986,370
May 1, 1993	986,370
August 1, 1993	986,370

November 1, 1993	986,370
February 1, 1994	986,370
May 1, 1994	986,370
August 1, 1994	986,370
November 1, 1994	986,370
February 1, 1995	986,370
May 1, 1995	986,370
August 1, 1995	986,370
November 1, 1995	986,370
February 1, 1996	986,370
May 1, 1996	986,370
August 1, 1996	986,370
November 1, 1996	986,370
February 1, 1997	986,370
May 1, 1997	986,370
August 1, 1997	986,370
November 1, 1997	986,370
February 1, 1998	986,370
May 1, 1998	986,370
August 1, 1998	986,370
November 1, 1998	986,370
February 1, 1999	986,370
May 1, 1999	986,370

August 1, 1999	986,370
November 1, 1999	986,370
February 1, 2000	986,370
May 1, 2000	986,370
August 1, 2000	986,370
November 1, 2000	986,370
February 1, 2001	986,370
May 1, 2001	986,370
August 1, 2001	223,976

Very truly yours,

MILWAUKEE BREWERY WORKERS' PENSION PLAN

BY s/s Kenneth Mueller
Chairman

AND s/s Ethel M. G
Secretary

THE FOLLOWING EXHIBIT HAS BEEN INSERTED HORIZONTALLY TO COMPLY WITH SUPREME COURT RULE 33

Exhibit
Plan 146(c)

ACTUARIAL REPORT AS OF JANUARY 1, 1981

MILWAUKEE BREWERY WORKERS' PENSION PLAN

6/17/81

22840-3 APPHA D

FOREWORD

Meidinger, Inc. was retained on behalf of plan participants by the Joint Committee to prepare an actuarial valuation of the Milwaukee Brewery Worker's Pension Plan. The valuation is for the plan year beginning January 1, 1981 and ending December 31, 1981.

The primary purpose of the valuation is to determine if the contribution rate (currently $1.454 per hour) will continue to be sufficient to provide payments for current retirees and at the same time continue to build a sufficient reserve for future retirees. This is measured by minimum requirements of ERISA's Funding Standard Account.

The contribution for 1981 will be sufficient, if contributed throughout the year for at least 6,070,000 hours. This is the projected number of hours for 1981 based on 4 months experience.

Minimum contribution required according to ERISA regulations (Funding Standard Account)	$8,917,996

For purposes of the Funding Standard Account the contributions will be credited with interest from the date paid. The amount of interest will be approximately $260,000. Therefore, if at least 5,955,000 hours is realized, the contribution with interest will result in a positive balance in the Funding Standard Account as of December 31, 1981.

The calculations for this valuation were based on the benefits in effect as of January 1, 1981 (i.e. $16 standard benefit).

MEIDINGER, INC.

s/s
Gary A. Pines, FSA, MAAA
Vice-President

TABLE OF CONTENTS

		Page
SECTION I: REPORT SUMMARY AND ACTUARIAL CERTIFICATION		3
A.	Report Summary	3
B.	Actuarial Certification	4
SECTION II: VALUATION COMMENTS		5
SECTION III:	ACTUARIAL VALUATION RESULTS	9
A.	Financial Summary	10
B.	Development of Valuation Assets	12
C.	Actuarial Valuation to Determine the Normal Cost and Unfunded Accrued Liability	13
D.	Actuarial Gains and Losses	14
E.	Schedule of Amortization Payments	15

F.	Funding Standard Account Minimum Contribution	17
G.	Range of Annual Contributions	18
H.	Actuarial Value of Unfunded Vested Accrued Benefits	19
I.	Present Value of Vested Benefits and Non-vested Accrued Benefits on an "On-Going Plan Basis"	20
SECTION IV:	ACTUARIAL ASSUMPTIONS AND METHOD, PLAN SUMMARY, AND PARTICIPANT DATA	21
A.	Actuarial Assumptions	21
B.	Actuarial Cost Method	22
C.	Summary of Major Plan Provisions	23
D.	Participant Data	25
E.	Illustrations of Actuarial Assumptions	25

SECTION I

REPORT SUMMARY AND ACTUARIAL CERTIFICATION

A. Report Summary

This section of the report summarizes the results of the January 1, 1981 actuarial valuation of the Milwaukee Brewery Worker's Pension Plan. This summary shows the range of contributions and other financial information for the plan year ending December 31, 1981, and provides a comparison with the results of the prior valuation. The development of the various items is shown in the remaining sections of the report.

	Current Valuation as of 1/1/81	Prior Valuation As of 1/1/80
1. Range of Annual Contributions (assuming payments are made on or after 12/31)	$16,840,046 ($2.774)	$16,956,375($2.528)

a. Maximum Tax Deductible	10,422,138 ($1.717)	10,482,121 ($1.563)
b. Normal Cost Plus 30 Year Funding (The Funding Objective)	9,090,553	10,108,935
c. Expected Contribution with interest (6,750,000 hours in 1980, 6,070,000 hours in 1981)	8,917,996 ($1.469)	9,324,780 ($1.390)
d. Minimum Required under ERISA		

The per hour costs in parentheses are based on the assumed 6,070,000 hours in 1981 and actual 6,707,000 hours in 1980.

2. Normal Cost due 1/1	1,155,251 ($ .190)	1,232,468 ($ .184)

3. Unfunded Accrued Liability	108,631,834	109,838,741
4. Assets (including accrued contributions)		
a. Actuarial Valuation Basis	48,433,827	45,018,299
b. Market Value	51,226,568	44,903,061

	Current Valuation as of 1/1/81	Prior Valuation As of 1/1/80
5. Actuarial Present Value of Vested Plan Benefits as of Beginning of Year (determined as required		

for Schedule B to Form 5500, see page 20)	$133,600,030	$129,573,138
a. Total Vested Liability	82,373,462	84,670,077
b. Unfunded Vested Liability (5a - 4b)		
6. Number of Participants		
a. Active Participants	3,448	3,675
b. Terminated Participants with Vested Benefits	63	60
c. Retired Participants and Beneficiaries Receiving Payments	2,417	2,278
d. Total	5,928	6,013

B. Actuarial Certification

The information and valuation results shown in this report are to the best of my knowledge, complete and accurate and are based upon:

1. Employee census data submitted by the employers under the plan. This data was not audited by us, but appears to be sufficient and reliable for purposes of the report.

2. Financial data submitted by Citibank and M & I Marshall & Ilsley Bank.

3. Actuarial assumptions which in the aggregate are reasonably related to the experience of the plan and to reasonable expectations, and which represent my best estimate of anticipated experience under the plan.

4. Actuarial method as stated in the report and my interpretation of plan provisions as summarized in the report.

William A. Farquhar FSA, MAAA
Enrolled Actuary (No. 2056)

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SECTION II

VALUATION COMMENTS

A. Census Data

This report is based on the 1/1/81 employee census consisting of 3,448 active participants, 2,417 retired participants and beneficiaries receiving payments, and 63 terminated participants who will be eligible to receive payments in the future, if still living.

A comparison with prior census data is as follows:

	1/1/81 Census	1/1/80 Census	1/1/79 Census	1/1/78 Census
Number of active Participants	3,448	3,675	3,914	4,146

Average Age	44.6 years	44.4 years	44.1 years	44.2 years
Average length of service	16.9 years	16.8 years	16.6 years	16.7 years
Number of Hours for which contributions were made during prior year	6,707,043	7,079,861	7,415,341	8,227,597
	5.3% decrease	4.5% decrease	10.4% decrease	

A summary of the change in census for the active participants over the past year was as follows:

		Number of Participants
1.	Participants as of 1/1/80	3,675
2.	Terminations	265

3.	Participants who remained throughout the year (1-2)	3,410
4.	New participants in 1980	38
5.	Participants as of 1/1/81 (3 + 4)	3,448

B. Financial Results

The trust fund produced an estimated rate of return of 15.3% net of expenses for fiscal 1980.

The actuarial valuation uses a modified figure for the value of assets each year. This figure is known as the Actuary's Value of Assets and is the basis of the asset valuation method. The purpose of this method is to "smooth" fluctuating values. It dampens the swings in the market value. This can be shown by the results over the past few years.

Date	(1) Market Value	(2) Actuary's Value of Assets	(3) Difference (1) - (2)	Estimated Rate of Return on Market Value	Estimated Rate of Return on Actuary's Value
12/31/80	$51,226,568	$48,433,827	$ 2,792,741	15.3%	8.6%
12/31/79	44,903,061	45,018,299	-115,238	10.0	4.9
12/31/78	41,405,635	43,441,683	-2,036,048	8.4	3.7
12/31/77	37,247,217	40,872,675	-3,625,458	-7.3	2.6
12/31/76	38,735,663	38,506,135	229,528	15.3	5.1

12/31/75	31,012,830	33,944,684	-2,931,854	23.8	2.7
12/31/74	23,070,802	30,918,188	-7,847,386	-27.3	-1.5

Compound rate of return at market value (7 years): 4.1%

This asset valuation method produced a decrease in the minimum contribution of about $77,000 (1.3¢ per hour).

C. Results of Valuation

As shown on the Foreword, a contribution in 1981 for over 5,955,000 hours is sufficient to meet ERISA's minimum requirements.

The expected contribution for 1981 with interest is projected to be based on 6,070,000 hours and is calculated as follows:

$1.454 x 6,070,000 hours x 1.03 = $9,090,553.

D. Other Actuarial Assumptions

In addition to the valuation of assets method and the interest rate assumption (as analyzed under financial results), the experience of the following two assumptions should be noted:

1. Contribution Amount

It was assumed that the $1.454 per hour contribution rate would be contributed for 6,750,000 hours in 1980. This produced an expected annual contribution with interest of $10,108,935 (6,750,000 x 1.454 x 1.03). The actual amount contributed with interest in 1980 was $9,977,622, or $131,313 less than the expected.

2. Retirement Rate (for normal and early retirement)

Shown on the following page is an updated table noting the "expected" number of retirements according to the actuarial assumption and the "actual" number of retirements. If the "actual" is equal to the "expected" there will be no actuarial gains or losses and no effect on the cost of the Plan.

Year Born	1977		1978		1979		1980		1981	
	Exp.	Act.	Exp.	Act.	Exp.	Act.	Exp.	Act.	Exp.	Act.
1911										
12	35	32								
13	16	16	35	35						
14	17	19	12	10	28	26	2	4	2	
15	38	31	20	27	15	12	33	21	12	
16	22	13	33	34	14	24	9	11	24	
17	27	14	25	15	30	21	19	27	12	
18	17	21	26	24	20	21	23	27	17	
19	12	18	14	16	22	14	15	14	27	
20	9	11	10	11	13	19	16	11	15	
21	5	11	7	8	10	9	16	13	17	
22	2	9	4	3	7	9	12	17	13	

Year Born	1977		1978		1979		1980		1981	
	Exp.	Act.	Exp.	Act.	Exp.	Act.	Exp.	Act.	Exp.	Act.
23			1	7	4	5	6	8	11	
24					1	8	7	9	6	
25							6	18	8	
26									4	
Total	200	195	187	190	164	168	164	180	168	

The "actual" number of retirements was fairly close to the "expected". In 1980 there were slightly more "actual" retirements after age 60, but significantly more than expected at the earlier retirement ages. Overall, this had the effect of producing actuarial losses because of the unexpected number of employees receiving the "supplemental" and "incentive" benefits.

E. Timing of Contributions

Requirements on the timing of contributions are currently as follows:

Satisfaction of ERISA's minimum contribution requirements (under the Funding Standard Account) --

Contribution must be paid within 2 1/2 months after the end of the plan year. But the Internal Revenue Service, in Temporary Regulation Section 11.412(c)-12, has extended this payment period for an additional 6 months. Thus, the plan has until 9/15/82, which is 8 1/2 months after the end of the plan year, to satisfy ERISA's minimum funding requirements.

SECTION III

ACTUARIAL VALUATION RESULTS

This section of the report provides information with respect to the valuation of plan assets and plan liabilities. The information shown is organized as follows:

Plan Assets

A. Financial Summary of Trust Fund for Plan Year Ending 12/31/80

B. Development of Valuation Assets

Plan Liabilities

C. Actuarial Valuation to Determine the Normal Cost and Unfunded Accrued Liability

D. Actuarial Gains and Losses

E. Schedule of Amortization Payments

Plan Contribution Levels

F. Funding Standard Account -- Minimum Contribution

G. Determination of Range of Annual Contributions

Vested and Non-vested Liabilities

H. Actuarial Value of Unfunded Vested Accrued Benefits and Non-vested Accrued Benefits

I. Present Value of Vested Benefits and Non-vested Accrued Benefits on an "On-going Plan Basis".

The valuation of benefits under a retirement plan is a determination of the present value of the future benefit amounts that will be paid from the assets of the plan. The usual technique, and the one employed in this valuation, is to determine this present value with respect to only the present poarticipants -- active, retired and terminated with vested rights. No specific allowance is made for future entrants to the plan. The valuation technique involves a projection of the future amounts that may be payable to each participant, a determination of the probability that each such payment will have to be made, and a computation of the present value of the probable future payments.

Financial Summary of Trust Fund for Plan Year Ending 12/31/80
(Market Value)

1.	Assets 1/1/80	$44,903,061.06
2.	Income and Expenditures 1/1/80 to 12/31/80	
	A. Income:	
	Employer Contribution Received	
	Miller $4,284,243.72*	
	Pabst 3,208,382.41	
	Schlitz 2,270,012.43	
	$9,762,638.56*	
	Receivable 12/31/80	
	Miller $ 315,200.32	
	Pabst 172,174.39	
	Schlitz 636.42	
	$ 488,011.13	
	Less receivable 1/1/80	
	Miller $ 272,748.35	
	Pabst 147,048.05	
	Schlitz 126,309.50	
	$ 546,105.90	
	$9,704,543.79	
	Investment Income	
	Interest received $2,781,620.78	
	Dividends received 694,172.35	
	Receivable 12/31/80 809,787.92	
	Less Receivable 1/1/80 607,675.11	
	3,677,905.94	
	Realized loss on sale of securities -338,480.25	
	Changes in unrealized gain 3,584,200.50	
	Settlement of Singer Securities class action suit 3,069.47	
	Miscellaneous 2,228.05	

Total Income	$16,633,467.50

*Including $7,317.57 receivable as of 1/1/80 for Miller not previously recorded.

Financial Summary (Continued)

Total income (from preceding page)		$16,633,467.50
b. Expenditures		
Benefit payments	$10,059,477.91	
Trustee fee	117,728.59	
Fee for administrative, actuarial & check writing	74,880.80	
Post office box rental	28.00	
Legal fee	15,691.15	
Accountant's fee	4,715.00	
Investment counseling fee	17,758.62	
Miscellaneous (includes $3,109.00 PBGC-1 premium; $10,425.00 bonding & fiduciary liability insurance; $5,631.92 stationery, printing and mailing expenses; $325.00 International Foundation dues; and $189.59 error on bond sale)	19,680.51	
Total Expenditures	10,309,960.58	
C. Excess of income over expenditures (a - b)		$6,323,506.92

3.	Assets 12/31/80 (1 + 2c)	$51,226,567.98
4.	Assets 12/31/80 (Market Value)	
	Cash:	
	Petty cash	$ 247.12
	M & I checking account	10,378.92
	Citibank	0
	Short Term Note	492,031.25
	U.S. Treasury Bills	1,763,078.00
	Commingled Employee Benefit Funds:	
	Short Term Fund	3,808,814.14
	Liquid Reserve Fund	505,553.15
	U. S. Bonds, Notes & Agencies	7,662,566.80
	Corporate Bonds & Notes	14,875,184.29
	Foreign Bond	71,812.80
	Mortgage	6,438.50
	Convertible Preferred Stock	112,500.00
	Common Stock	20,168,532.38
	Receivables:	
	Investment Income	809,787.92
	Proceeds of Unsettled Sales	460,961.57

Contributions	488,011.13
Payables: Cost of Unsettled Purchases	-9,330.00
Total	$ 51,226,567.97

B. Development of Valuation Assets
(Actuarial Assumption for Valuation of Assets)

In order to smooth the volatile movement of the market value of assets from year to year, an "Actuary's Value of Assets" is determined each year. This value is used as the acturial assumption for the valuation of assets.

It is calculated by projecting the beginning of the year value to the end of the year at the valuation interest rate and adding the actual contribution less benefit payments that accumulate during the year, also adjusted for interest. The resulting figure is then adjusted by 20% of the difference from the actual market value.

The calculation for the current year's valuation is shown below.

1.	Actuary's Value of Assets 12/31/79		$ 45,018,299
2.	Expected increases in Actuary's Value 12/31/79 to 12/31/80 (based on actuarial assumption (7%) as to rate of return on investments)		
	a. Contributions	$9,704,544	
	b. Benefit payments	10,059,478	
	c. Expected investment income		

	using assumed 7% rate of return on:		
	i. Actuary's Value	$3,151,281	
	ii. Contributions	273,078	
	iii. Benefit payments	352,082	
	iv. Total (i + ii - iii)		3,072,277
	d. Net expected increase in Actuary's Value (a - b + c)		2,717,343
3.	Expected Actuary's Value of Assets 12/31/80 (1 + 2d)		$47,735,642
4.	Actual market value of assets 12/31/80		$51,226,568
5.	Adjustment to smooth investment gains and losses		
	a. Net gains (losses) (4 - 3)		3,490,926
	b. Current amount of gain (loss) to be recognized in 12/31/80 Actuary's Value (20% of 5a)		+698,185
6.	Actuary's Value of Assets 12/31/80 (3 + 5b)		$48,433,827

The determined Actuary's Value of Assets must be no less than 80% nor nore than 120% of market value. As of 12/31/80, the Actuary's Value of Assets is 94.5% of market value.

C. Acturial Valuation to Determine the Normal Cost and Unfunded Accrued Liability (Entry Age Normal)

		1981 Figures	1980 Figures (for comparison)
1.	Normal cost due 1/1/81		
a.	Normal and early retirement	$ 720,301	
b.	Early retirement supplement	80,070	
c.	Incentive retirement	68,151	
d.	Disability retirement	99,514	
e.	Vested retirement	34,668	
f.	Automatic survivor	56,533	
g.	Pop-back at age 65	96,014	
e.	Total	$ 1,155,251	$ 1,232,468
		($.190/hr)	($.184/hr)
2.	Accrued liability 1/1/81		
a.	Active participants		
	Normal and early retirement	$54,010,899	
	Early retirement supplement	4,201,177	
	Incentive retirement	3,226,023	
	Disability retirement	4,018,047	

	Vested retirement	372,288	
	Automatic survivor	2,371,269	
	Pop-back at age 65	5,739,559	
	Total -- active	$73,939,262	$ 79,609,630
b.	Inactive participants		
	Payable for life of participant	$30,526,580	
	Payable to participant while living for a temporary period (incentive and supplement)	4,613,069	
	Payable on a joint and survivor basis	42,393,064	
	Payable for life of a survivor		
	-- of a pensioner	3,547,295	
	-- of an active participant	1,713,368	
	Deferred for later commencement	333,023	
	Total -- inactive	$ 83,126,399	$ 75,247,410
c.	Total -- active and inactive (a + b)	157,065,661	154,857,040
3.	Actuary's Value of Assets 12/31/80	48,433,827	45,018,299

4.	Unfunded accrued liability 1/1/81 (2c - 3)	$108,631,834	$109,838,741

Cents per hour costs are based on the assumed 6,070,000 hours in 1981 and actual 6,707,000 hours in 1980.

D. Determination of Actuarial Gain (Loss) for Plan Year Ending 12/31/80

1. Liability Gain (Loss)

a.	Accrued Liability 1/1/80	$154,857,040
b.	Normal Cost due 1/1/80	1,232,468
c.	1980 benefit payments	10,059,478
d.	Interest at 7% to 12/31/80 on:	
	i. Accrued liability	10,839,993
	ii. Normal cost	86,273
	iii. Benefit payments	352,082
e.	Expected accrued liability 12/31/80 (a + b - c + d(i) + d(ii) - d(iii))	156,604,214
f.	Actual accrued liability 12/31/80	157,065,661
g.	Liability gain (loss) (e - f)	-461,447

2.	Asset Gain (Loss) (see page 12, line 5b)	$ +698,185
3.	Total Actuarial Gain (Loss) (1g + 2)	$ 236,738

Gains (i.e., liabilities less than expected) and losses (i.e., liabilities greater than expected) will occur from year to year because the experience will not be exactly the same as the acturial assumptions. In general, gains will occur from the following sources:

(a) Investment earnings greater than those estimated using the valuation interest rate.

(b) Mortality higher than the assumed rate.

(c) Withdrawals higher than the assumed rate.

(d) Disability lower than the assumed rate.

(e) Retirements occurring later than the assumed average retirement age.

Losses will occur for the opposite reasons and all such gains and losses will be reflected by changes in the unfunded accrued liability.

E. Schedule of Amortization Payments

1. For Maximum Annual Contribution

Regulations have been published to provide for determining the deductible limits under section 404(a)(1)(A) of the Internal Revenue Code. Under the regulations, 10 year amortization bases must be established to reflect the plan on the ERISA compliance date, plan amendments, changes in actuarial assumptions, and acturial gains and losses.

The Regulations allow a new 10-year amortization base to be established. This procedure was followed as of 1/1/80.

	Unfunded Accrued Liability Amount	Established	Amortization Payment Amort. Period	Payment on 1/1	Outstanding Balance on 1/1/81
a. Unfunded accrued liability established 1/1/80	$109,838,741	1/1/80	10	$14,614,61	$108,868,572

b. Experience gain during 1980	-236,738	1/1/81	10	-31,501	-236,738
				$14,583,11	$108,631,834

Schedule of Amortization Payments (continued)

2. For Funding Standard Account

ERISA requires that in determining the status of the funding standard account actuarial gains and losses be amortized over 15 years and increases and decreases in the accrued liability due to plan amendments be amortized over 30 years. The initial accrued liability on the date the funding standard account was established is amortized over 40 years.

		Unfunded Accrued Liability		Amortization Payment		
		Amount	Established	Amort. Period	Payment on 1/1	Outstanding Balance on 1/1/81
Charges						
a.	Initial unfunded accrued liability (UAL)	$90,838,633	1/1/76	40	$ 6,280,294	$87,009,454
b.	Increase in UAL due to actuarial loss in 1976	1,095,622	1/1/77	20	94,874	959,019

c.	Increase in UAL due to plan change	24,847,222	1/1/78	40	1,730,234	24,284,156
d.	Increase in UAL due to actuarial loss in 1977	2,461,222	1/1/78	20	214,497	2,240,723
e.	Increase in UAL due to actuarial loss in 1978	1,385,263	1/1/79	20	121,473	1,307,428
f.	Increase in UAL due to plan change	23,084,183	1/1/80	40	1,618,239	22,968,560
g.	Increase in UAL due to actuarial loss in 1979	1,664,074	1/1/80	20	146,796	1,623,487
	Total charges 1/1/81				$10,206,405	$140,392,825
Credits:						
a.	Decrease due to assumption change	$31,201,734	1/1/80	30	$ 2,349,948	$30,871,410

b.	Decrease due to 1980 experience gain	236,738	1/1/81	15	24,292	236,730
	Total charges 1/1/81				$ 2,374,240	31,108,140

Fund Standard Account

The funding standard account is used to determine whether the plan meets the minimum funding requirements under ERISA. The funding standard account for the plan year ending December 31, 1981, and the two prior years, is as follows:

		Plan Year Ending December 31		
		1979	1980	1981
1.	Charges to funding standard account:			
a.	Prior year funding deficiency 1/1	--	--	--
b.	Normal cost due 1/1	$1,936,399	$ 1,232,468	$ 1,155,251
c.	Amortization charges due 1/1 (see page 16)	6,798,607	10,206,407	10,206,407
d.	Interest on (a), (b) and (c)	436,750	800,721	795,316
e.	Total charges, sum of (a)			

	through (d)	$9,171,756	$12,239,596	$12,156,974
2.	Credits to funding standard account:			
	a. Prior year credit balance 1/1	$1,070,163	$ 374,179	$ 652,842
	b. Contributions	8,261,972	9,704,544	0
	c. Amortization credits due 1/1 (see page 16)	--	2,349,948	2,374,240
	d. Interest on (a), (b) and (c)	213,800	463,767	211,896
	e. Total credits, sum of (a) through (d)	$9,545,935	$12,892,438	$ 3,238,978
3.	Balance as of 12/31:			
	a. Credit balance, excess, if any, of 2(e) over 1(e)	$ 374,179	$ 652,842	--
	b. Funding deficiency, excess, if any, of 1(e) over 2(e)	--	--	$ 8,917,996

As of 12/31/81 there will be an accumulated funding deficiency of $8,917,996. A contribution of at least this amount is required for the plan year ending 12/31/81 to avoid the penalties under ERISA.

G. Determination of the Range of Annual Contributions

	1981 Contribution	1980 Contribution (for comparison)
Maximum Deductible Contribution		
a. Normal cost due 1/1/81	$ 1,155,251	
b. 10 year amortization payments (see page 15)	14,583,110	
c. Interest on above to 12/31/81	1,101,685	
Maximum deductible 1981 contribution (a + b + c)	$16,840,046 ($2.774/hr)	$16,956,375 ($2.528/hr)

Funding Objective:
"30-year Funding" Contribution
(The amount to pay the normal cost
and to amortize the 1/1/81 unfunded

accrued liability over 26 years)

a. Normal cost due 1/1/81	$ 1,155,251	
b. 26 year amortization payment of the 1/1/81 unfunded accrued liability	8,585,065	
c. Interest on above to 12/31/81	681,822	
"30 year funding" contribution level (a + b + c)	$10,422,138 ($1.717/hr)	$10,482,121 ($1.563/hr)
Funding Standard Account Minimum contribution required under ERISA (see page 17)	$ 8,917,996 ($1.469/hr)	$ 9,324,780 ($1.390/hr)
Expected Contribution with Interest		
6,070,000 hours x $1.454 x 1.03 =	$ 9,090,553	$10,108,935

(9.5% less hours than 1980) (actual
contribution

for

with interest

1980 was
$9,977,622)

The cents per hour costs in parentheses are based on the assumed 6,070,000 hours in 1981 and actual 6,707,000 hours in 1980.

H. Actuarial Value of Unfunded Vested Accrued Benefits

The actuarial value of accrued benefits is the present value of all benefits that have been earned for service up to a certain date. The calculation of the actuarial value of vested accrued benefits (i.e. vested liability) is based on only those participants who have met the vesting eligibility requirements. As of 1/1/81 it assumes that all active participants eligible for a vested benefit, of whom there are 1,874, terminated at the $16.00 standard benefit.

Vested benefits include normal retirement (5/65), early retirement (10/55) and vested retirement (10/-).

The actuarial value of unfunded vested accrued benefits or "unfunded vested liability" figure shown on this page provides one measure of how the plan's assets compare with current liability in a plan termination situation.

	7% Valuation Interest Assumption	PBGC Assumption* (as of 1/1/81)
1. Vested Liability for Basic Benefits as of 1/1/81	$125,925,618	$106,963,885

2.	Market Value of Assets as of 1/1/81	52,226,568	51,226,568
3.	Unfunded Vested Liability for Basic Benefits (1 - 2)	74,699,050	55,737,317
4.	Vested Liability for Supplmental Benefits**	27,281,641	24,820,415
5.	Unfunded Vested Liability for all benefits (3 + 4)	$101,980,691	$ 80,557,732

*PBGC interest rate of 9 1/2% for immediate annuities and 8 3/4% grading down to 5% for deferred annuities.

**Supplemental Benefits include the Supplemental, Incentive and Pop-back benefits.

I. Actuarial Present Value of Accumulated Plan Benefits

The actuarial value of accumulated plan benefits is the present value of all benefits that have been earned for service up to the valuation date. Previous valuation reports have referred to this as the actuarial value of accrued plan benefits on an ongoing basis. The terminology and presentation have been revised to comply with the requirements of FASB #35 and #36. This information must also be disclosed on the Schedule B attachment to form 5500 for plans with 100 or more participants, as required by Internal Revenue Service regulations. The 1980 Schedule B, however, retains the previous terminology of present value of accrued benefits, although it requires the same value and "ongoing plan basis" method of calculation.

The actuarial value of accrued benefits on a plan termination basis, presented for comparison, is included on page 19.

The present value of accumulated plan benefits must be broken down by participant category, i.e., active, retired, etc. The calculations must be done on an "ongoing basis." The calculations are made as of the beginning of the plan year as required for Schedule B disclosure. FASB #35 and #36 permit beginning of year values.

The calculations are based on the valuation interest assumption of 7%.

STATEMENT OF ACCUMULATED PLAN BENEFITS

		January 1, 1981
ACTUARIAL PRESENT VALUE OF ACCUMULATED PLAN BENEFITS		
1.	Vested benefits	
	a. Participants currently receiving payments	$ 82,793,376
	b. Other participants	50,806,654
	c. Total (a + b)	133,600,030
2.	Nonvested benefits	8,036,392
3.	Total actuarial present value of accumulated plan benefits (1c + 2)	$141,636,422

The results of the ongoing calculation do not affect responsibilities with regard to th Pension Benefit Guarantee Corporation, which are defined in terms of a plan termination basis calculation.

SECTION IV

ACTUARIAL ASSUMPTIONS AND METHOD, PLAN SUMMARY, AND PARTICIPANT DATA

This section of the report presents the actuarial assumptions and method used in the valuation, a summary of the major provisions of the plan, and a tabulation of the employee data used in the calculations.

A. Actuarial Assumptions

The actuarial assumptions used in this year's valuation are the same as in the previous valuation and are as follows:

1. Investment Return — 7%, compounded annually

2. Mortality

   a. Active Participants* — UP-1984 Mortality Table (set forward 1 year)

   b. Terminated Participants — UP-1984 Mortality Table (set back 4 years for females and set forward 1 year for males)

   c. Disabled Participants — 1956 Disability Annuitants Mortality Table set forward 1 year age and set back 1 year duration

3. Withdrawal* — Rates based on length of service determined from a prior experience analysis. Termination rates stop at age 54. (T-11 adj.)

4. Retirement Rates — Rates of retirement as follows:

Attained Age	Percentage of Remaining Active Participants Assumed to Retire
55	3%
56	5

57	5
58	9
59	12
60	15
61	15
62	30
63	30
64	30
65	100

*See attached table for rates.

5.	Disability Rates*	Moderate rates of becoming totally and permanentaly disabled varying by age
6.	Spouse's Benefit	60% will elect Joint and Survivor option at retirement with spouse, and 5% will elect Co-pensioner option. Spouse or Co-pensioner 3 years younger
7.	Expenses	No special allowance.
8.	Asset Valuation Technique	Moving average of marker values, which accounts for 20% of the deviation between the expected market value (according to actuarial assumptions) and the actual market value. The determined value of assets will not be less than 80% nor more than 120% of the market value of assets as of the date of determination.

9. Employee Included — All employees with one or more years of Credited Service

*See attached table for rates.

B. Actuarial Cost Method (Entry Age Normal)

An actuarial cost method is a technique which determines the amount and incidence of the contributions of the plan. The actuarial cost method attempts to spread the cost of the forecasted liabilities into the future and put the costs into contributions that are on a budgetable basis. The actuarial cost method used in the actuarial valuation of this plan is the Entry Age Normal cost method as described below.

Under the Entry Age Normal cost method, the costs are split into two portions, the normal cost and the accrued liability.

The normal cost is expressed as a level amount (depending primarily on age at employment), which if it is paid as a contribution to the plan (each year from the date each employee is hired to the date the employee terminates employment by reason of retirement, death or withdrawal), would pay for all benefits provided by the plan (if actual experience is the same as is assumed in the actuarial assumptions).

The accrued liability is the actuarial present value of future benefits less the actuarial present value of future normal costs accruals, both calculated at the valuation date.

The difference between the accrued liability and the assets at the valuation date is the unfunded accrued liability. Each year the difference between the expected unfunded accrued liability, based on actuarial assumptions being exactly realized, and the actual unfunded accrued liability is the actuarial gain (loss) for the previous year.

C. Summary of Major Plan Provisions

Employer -- An employing unit which is a party to the 1953 Collective Bargaining Agreement or any successor collective bargaining agreement with the Union and which is contributing to the Fund. Currently:

Miller Brewing Company
Pabst Brewing Company
Jos. Schlitz Brewing Company

Union -- Brewery Workers Local Union No. 9 D.A.L.U., AFL-CIO.

Effective Date -- 3/1/54, most recently amended 6/1/79.

Employee -- Any person who on or after 3/1/53 is employed by the Employer or is on the seniority list of the Employer in the bargaining unit represented by the Union.

Past Service -- Credited to an Employee who is employed on 6/1/77 equal to 1/1/78 credited service under pre-6/1/77 plan.

Vesting Service -- Total of Past Service and Future Service for Vesting (one year for each year after 1977 in which 1,000 Hours of Work are accrued - not less than Future Service for Benefit. Hour of Work is basically an hour which is directly or indirectly compensated by the Employer.)

Accrual Service -- Total of Past Service and Future Service for Benefits (one year for each year after 1977 in which 1,000 Paid Hours are accrued. Paid Hour is basically an hour directly compensated by the Employer up to 40 hours per week).

Standard Benefit -- A monthly benefit of $16 multiplied by years of Accrual Service.

Normal Retirement -- On retirement after age 65 for those Employees hired prior to age 60.

Disability Retirement -- On establishing total and permanent disability after 10 years of Accrual Service, the Standard Benefit reduced by Workmen's Compensation and disability benefits provided under any program to which the Employer contributes other than Social Security or equivalent State program. Upon attaining age 65, the Standard Benefit is payable.

Early Retirement -- On early retirement after 10 years of Accrual Service and age 55, a monthly benefit equal to the Standard Benefit reduced by 1/240th for each calendar month (not in excess of 60) by which early retirement precedes age 65 and by 1/400 for each calendar month by which early retirement precedes age 60. Upon attainment of age 65, the benefit payable before age 65 shall be increased by the amount of the reduction.

Vested Retirement Benefit -- On termination of employment with 10 years of Vesting Service the Standard Benefit payable at age 65, or a reduced benefit (see Early Retirement) as early as 55. However, the benefit will not be increased at age 65 as under Early Retirement.

Joint and 50% to the Surviving Spouse Option -- Automatic option (unless no spouse or rejected by employee) provides 90% of regular benefit to the employee (± 1/2% for each year the spouse is more than 5 years older or younger than employee) with half of that benefit continued to surviving spouse. Upon death of the spouse before the employee, the amount of the benefit payable shall be determined as if the employee had not elected this option. Option available at benefit commencement date.

Co-pensioner Option -- Upon designation to the Joint Committee of a co-pensioner, provides 83% of regular benefit to the employee (± 1/2% for each year the co-pensioner is older or younger than employee) with half of that benefit continued to surviving co-pensioner. Upon death of the co-pensioner before the employee, the amount of the benefit payable shall be determined as if the employee had not elected this option.

Incentive Retirement -- On early retirement after 10 years of Accrual Service and age 55 (not eligible for Disability Retirement), a monthly benefit of $105 payable until age 65 (not subject to J & S option).

Early Retirement Supplement -- On early retirement after 20 years of Accrual Service and age 55 (not eligible for Disability Retirement), a monthly benefit of $12 multiplied by years of Accrual Service (maximum 35) payable until age 62 or earlier eligibility for Social Security (not aubject to J & S option).

Automatic Survivor Benefit and Designated Co-Pensioner Benefit -- On death after 20 years of Accrual service or age 55 and 10 years Accrual Service and before retirement, pays income to surviving spouse or designated Co-pensioner as if employee had retired and elected the joint and 50% to the surviving spouse option or co-pensioner option. If the age 55 and 10 years of accrual service requirements are not met, the benefit is not increased at the time that the employee would have been age 65 by 100% of the early retirement reduction.

Administration of Plan -- Joint Committee of Employer and Union representatives.

Medium of Funding -- Trust Fund held by The First National City Bank of New York.

D. Participant Data

1. Active Participant Data

Census Data

Attained Age in 1980	Years of Credited Service to 1/1/81											
	1	2	3	4	5-9	10-14	15-19	20-24	25-29	30-34	35 & over	Total
20-24	7	1	9	12	52							81
25-29	8	15	24	42	334							423
30-34	14	11	31	52	273	52	3					436
35-39	10	12	9	29	197	125	65	4				451
40-44	11	5	11	28	126	74	91	31				377
45-49	6	7	9	12	85	40	53	43	18	16		289
50-54		2	4	5	65	37	33	35	51	205	7	444
55-59		1			37	17	33	15	56	356	119	634
60-64					11	4	21	11	34	122	99	302

65 & over					1	1	3	1		4	1	11
Total	56	54	97	180	1,181	350	302	140	159	703	226	3,448

Average Attained Age: 44.6 years

Average Years of Credited Service: 16.9 years

2. Pensioners and Beneficiaries as of 1/1/81 2,417

3. Vested Terminated Participants as of 1/1/81 63

E. Illustrations of Actuarial Assumptions

Tables are shown on the following pages.

Active Life Mortality
(Percent of remaining participants then active)

Age	Mortality Rate	Age	Mortality Rate
18	.14%	43	.31%
19	.13	44	.34
20	.13	45	.38
21	.12	46	.42
22	.11	47	.46
23	.11	48	.51
24	.11	49	.56
25	.11	50	.62
26	.11	51	.69
27	.11	52	.75
28	.11	53	.83
29	.11	54	.90
30	.11	55	.99

31	.12
32	.12
33	.13
34	.14
35	.15
36	.16
37	.18
38	.19
39	.21
40	.23
41	.26
42	.28
56	1.08
57	1.19
58	1.30
59	1.42
60	1.55
61	1.70
62	1.87
63	2.05
64	2.26
65	2.48

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Illustration of Assumptions Used in Valuations For Participants Hired at Age 33

(Percent of remaining participants then active)

Age	Withdrawal Rate*	Disability Rate Before Retirement	Retirement Rate
33	50.20%	.04%	
34	29.66	.04	
35	20.03	.04	
36	12.44	.04	
37	7.55	.05	
38	4.51	.05	
39	2.85	.06	
40	1.71	.07	
41	1.47	.08	
42	1.29	.09	
43	1.16	.10	
44	1.05	.12	
45	.96	.14	
46	.89	.16	

47	.83	.18	
48	.78	.12	
49	.74	.16	
50	.70	.30	
51	.66	.35	
52	.62	.41	
53	.58	.48	
54	.56	.56	
55		.64	3%
56		.74	5
57		.86	5
58		.99	9
59		1.14	12
60		1.30	15
61		1.46	15
62		1.68	30
63		1.98	30
64		2.44	30
65			100

*No withdrawals assumed after age 54

Service Table

Illustrating effect of mortality, disability and withdrawal assumptions for age 33 at employment

Participants Age Service	Number of Participants Remaining in Service	Age	Number of Remaining in
33	1,000	58	133
34	497	59	118
35	349	60	101
36	278	61	83
37	243	62	68
38	224	63	45
39	213	64	30
40	207	65	20

41	203
42	199
43	196
44	193
45	190
46	187
47	184
48	181
49	179
50	176
51	173
52	170
53	167
54	164
55	161
56	153
57	143

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